United Nations CERD/C/ARG/19-20

International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
8 June 2009
English
Original: Spanish

Committee on the Elimination of Racial Discrimination

Reports submitted by States parties under article 9 of the Convention

Twentieth periodic reports of States parties due in 2008*

Addendum

Argentina**

[12 December 2008]

* This document contains the nineteenth and twentieth periodic reports of the Argentine Republic, due on 4 January 2008, submitted in one document. For the sixteenth to eighteenth periodic reports and the summary records of the meetings at which the Committee considered those reports, see documents CERD/C/476/Add.2 and CERD/C/SR.1656 and 1657.

** In accordance with the information transmitted to States parties regarding the processing of their reports, this report was sent directly to the United Nations translation service without prior official editorial revision.

Consolidated report (19th and 20th reports) of the Republic of Argentina under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination

Introduction

This report — submitted in consolidated form as requested by the Committee in paragraph 26 of its concluding observations following its consideration of the previous Argentine report (CERD/C/65/CO/1) in August 2004 — contains a description of the measures adopted by the Argentine Republic since that date, for the effective implementation of the Convention.

For the sake of convenience, the information in this report has been restricted to areas where significant developments have taken place in the implementation of the Convention. An effort has also been made to avoid repeating information which has already been supplied to the Committee and to other treaty bodies to which Argentina is a party, to which the reader is referred in the interest of brevity.

Detailed replies will be given to the questions raised by the Committee in its concluding observations on the previous consolidated report submitted by the Argentine Republic.

For the preparation of this report, non-governmental organizations were consulted through the Civil Society Forums of the National Institute against Discrimination, Xenophobia and Racism.

Contents

Annexes

Part One
General information

I. Demographic composition

1. The National Statistical and Census Institute (INDEC) has published the results of the 2001 National Population and Housing Census. This was the ninth national census and represents the continuation of a long statistical tradition that dates back to 1869, when the first nationwide population survey was conducted.

2. The census results provide information on population and households in accordance with either precoded variables (for multiple-choice answers) or coded variables (for open-ended questions), including housing characteristics, basic demographic attributes, whether retired or in receipt of a pension, health coverage, literacy, migration, school attendance, educational level and grade, marital status, familial organization, fertility, economic activity status, occupational category, type of occupation, size and activity of establishment. The data are disaggregated at various levels, including provincial/departmental, urban/rural, locality and local government unit (municipalities, development committees, etc.).

3. The census recorded a total population of 36.26 million inhabitants. The male population was 17,659,072 and the female population 18,601,058. Urban concentration is pronounced, with 13,827,203 of the total population living in the province of Buenos Aires.

4. INDEC also carries out complementary surveys focusing on indigenous populations, persons with disabilities and international migration. The latter survey covers migration from neighbouring countries (Bolivia, Chile, Paraguay, Brazil and Uruguay) only, so that disaggregated data on the nationality of all foreign nationals in Argentina are not available. Similarly, no data are available on Argentines of minority group origin.

II. Legislative framework for the protection of human rights

5. On 1 November 2006 the National Congress approved Act No. 26162, enacted on 24 November 2006, which recognizes the competence of the Committee on the Elimination of Racial Discrimination, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, approved by Act. No. 17722, to receive and consider communications from individuals or groups of individuals within the jurisdiction of the Argentine Republic claiming to be victims of a violation by the State of any of the rights set forth in the Convention. This Act establishes the National Institute against Discrimination, Xenophobia and Racism (INADI) as the body within the national legal system that is competent to receive and consider the aforementioned communications.

6. With regard to the procedure for the submission of individual petitions, article 14, paragraph 4, of the International Convention on the Elimination of All Forms of Racial Discrimination stipulates that the body established or indicated in accordance with paragraph 2 of the aforementioned article — which in Argentina's case is INADI — shall keep a register of petitions and that certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.

7. In the event of failure to obtain satisfaction from the body established at national level, the petitioner shall have the right to communicate the matter to the Committee within six months. The Committee shall confidentially bring any communication referred to it to the attention of the State party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed

without his or their express consent. The Committee shall not receive anonymous communications.

8. Lastly, it may be pointed out that, in recognizing the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals claiming to be victims of a violation of any of the rights set forth in the Convention, Argentina is once again reaffirming its firm commitment to the promotion and protection of fundamental human rights.

9. On 15 November 2006, the National Congress passed Act No. 2617, enacted on 6 December 2006, which approved the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the General Assembly on 6 October 1999. This Protocol establishes that all States parties to the Protocol shall recognize the competence of the Committee on the Elimination of Discrimination against Women to receive and consider communications submitted in accordance with article 2. Communications may be submitted by or on behalf of individuals or groups of individuals under the jurisdiction of a State party claiming to be victims of a violation of any of the rights set forth in the Convention by that State party.

10. Additionally, on 21 February 2007, Argentina ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

11. Also in February 2007, Argentina deposited the ratification instrument for the International Convention for the Protection of All Persons from Enforced Disappearance.

12. Subsequently, in September 2008, Argentina ratified the Convention on the Rights of Disabled Persons and its Optional Protocol.

13. As already explained in earlier reports, the majority of the aforementioned international human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination, enjoy constitutional rank. Various decisions handed down by the Supreme Court of Justice have confirmed that international treaties take precedence over national law.

III. Competent authorities for the protection of the right to equality and the principle of non-discrimination

14. The principal national authorities with competence for combating discrimination are the following:

A. National Institute against Discrimination, Xenophobia and Racism

15. The National Institute against Discrimination, Xenophobia and Racism (INADI) is a decentralized agency that operates under the authority of the Ministry of Justice, Security and Human Rights. Established by Act No. 24515, its purpose is to formulate national policies and practical measures for combating discrimination, xenophobia and racism and to foster and carry out initiatives to that end.

16. INADI was transferred from the Ministry of the Interior, of which it originally formed part, to the Ministry of Justice, Security and Human Rights by virtue of article 1 of Decree No. 184/2005.

17. Under the terms of Decree No. 1086/05, INADI was entrusted the task of coordinating implementation of the proposals set out in the document entitled “Towards a National Plan against Discrimination – Discrimination in Argentina. Diagnosis and proposals”, which is considered in detail later in this report. Decree No. 1086/05 also stipulated that the provinces, the Autonomous City of Buenos Aires and provincial

municipalities be encouraged to adopt the provisions of the decree and to contribute to the research and action necessary to formulate the National Plan against Discrimination.

18. In fulfilment of the aforementioned mandate, INADI runs a local management structure with offices in the provinces of Buenos Aires, Catamarca, Chaco, Chubut, Córdoba, Corrientes, Entre Ríos, Formosa, Jujuy, La Pampa, La Rioja, Misiones, Mendoza, Neuquén, Río Negro, Salta, San Juan, San Luis, Santa Fe, Santiago del Estero, Tierra del Fuego and Tucumán.

19. As indicated at the start of this report, INADI is the body within the national legal system which is competent to receive and consider the communications envisaged in article 1 of Act No. 26162, recognizing the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals within the jurisdiction of the Argentine Republic claiming to be victims of a violation by the State of any of the rights set forth in the International Convention on the Elimination of All Forms of Racial Discrimination.

20. In September 2006 the President and Vice-President of INADI introduced a new management structure. The principal objectives of this change were:

(a) To federalize management (by revitalizing and/or setting up INADI offices throughout the country);

(b) To improve care for victims of discrimination by providing a comprehensive advisory and guidance service, with the launch of a toll-free helpline (0800 9992345), the provision of information online at www.inadi.gov.ar, the TV programme "INADI con vos" (INADI with you), and the offer of legal advice by legal experts at INADI reception desks;

(c) To develop and strengthen civil society forums that coordinate management of the various discrimination-related issues;

(d) To raise social awareness of the problems caused by discrimination and to formulate public policies that have education for diversity as their immediate goal.

B. National Institute of Indigenous Affairs

21. The National Institute of Indigenous Affairs (INAI) is the national agency responsible for creating intercultural channels for implementation of the rights of indigenous peoples enshrined in the National Constitution (art. 75, para. 17). It was established in September 1985 under Act No. 23302 as a decentralized body with indigenous participation and regulated by Decree No. 155 in February 1989. In accordance with the provisions of Act No. 23302, INAI is constituted as a decentralized agency with indigenous participation that reports directly to the Ministry of Social Development.

22. The main responsibilities of INAI are:

(a) To organize the registration of indigenous communities in the National Registry of Indigenous Communities (RENACI). To this end, it coordinates its work with that of the provincial governments and provides the necessary guidance to communities by organizing training workshops for the purpose of facilitating formalities;

(b) To coordinate all available mechanisms to comply with the constitutional requirement to "recognize the communities' possession and ownership of the lands they traditionally occupy" and to regulate the grant of other lands adequate and sufficient for human development (National Constitution, art. 75, para. 17);

(c) To encourage indigenous participation in the formulation and implementation of identity development programmes, providing the necessary technical and financial support;

(d) To coordinate programmes in support of intercultural education, aboriginal teaching methods, cultural revitalization and historical research undertaken by the communities themselves;

(e) To foster mediation and indigenous involvement in areas impacting on the interests of communities, including natural resources and biodiversity, sustainable development, health policies, communication and production, and the management and marketing of authentic handicrafts.

C. National Women's Council

23. The National Women's Council is the national government agency responsible for public policies on equal opportunities and equal treatment between men and women. Its principal remit is to foster a sociocultural transformation based on the full and equal participation of women in the social, political, economic and cultural life of the country. This transformation is founded on a new concept of citizenship, which recognizes the existence of inequalities and inequities that jeopardize the full exercise of citizenship and which promotes responsibility sharing between men and women.

24. The specific objectives of the National Women's Council are:

(a) To create awareness of the importance of gender equality in strengthening democracy;

(b) To foster gender-responsive public policies that help eliminate the various forms of discrimination against women and promote the social conditions necessary to guarantee women the effective exercise of their rights;

(c) To strengthen provincial and local women's programmes and encourage the development of joint initiatives.

25. In order to achieve this social transformation throughout society in favour of gender equality by influencing the government bodies responsible for public policies, the Council pursues the following strategies:

(a) Fostering and monitoring effective compliance with international treaties:

(i) International Convention on the Elimination of All Forms of Discrimination against Women, which has had constitutional rank in Argentina since the constitutional reform of 1994;

(ii) Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (the Belém do Pará Convention), Act No. 24632, approved by the National Congress in 1996;

(b) Maintaining dialogue with civil society, with a view to establishing a forum for sharing, debating and promoting proposals for the design and monitoring of gender-responsive policies;

(c) Mainstreaming gender in the public policies of sectoral ministries, such as health, labour, education, justice and interior, on the basis of joint initiatives and actions;

(d) Adopting a federal approach in the development of programmes and activities that bolster the institutional strength of jurisdictional women's programmes (provincial, municipal and City of Buenos Aires);

(e) Forging stronger links with the (national and provincial) judiciary and legislature.

D. National Advisory Commission for the Integration of Persons with Disabilities

26. The National Advisory Commission for the Integration of Persons with Disabilities (CONADIS) was established by Decree No. 1101/87, following the proposals put forward by the World Programme of Action concerning Disabled Persons, approved by the General Assembly of the United Nations in resolution 37/52.

27. The primary responsibility of CONADIS is to coordinate, regulate, advise on, promote and disseminate across the country any initiative that may directly or indirectly contribute to the integration of persons with disabilities, irrespective of age, gender, race, religion or socio-economic status, ensuring fair distribution of and access to the benefits deriving therefrom.

28. The work of CONADIS derives its inspiration from the fundamental principles of the National Constitution, legislation and international documents relating to equality, freedom and solidarity. Its objectives include preventing discrimination, promoting participation in activities, fostering decentralization in order to bring the administration closer to persons with disabilities, and the planning needed to build efficiency and flexibility in order to eliminate duplication, encouraging community action through provincial and municipal disability commissions, committees or councils and fostering the development of private initiatives, by highlighting the work of non-governmental agencies formed by or working on behalf of persons with disabilities.

29. CONADIS was entrusted with additional responsibilities under Decree No. 984/92, including, inter alia, the task of formulating disability policies in consultation with the relevant national and provincial bodies and with the involvement of private organizations formed by or working on behalf of persons with disabilities, and submitting the proposed policies to the corresponding bodies for approval.

30. As established in Decree No. 984/92 and subsequent amendments thereto, the main responsibilities of CONADIS are the following:

(a) To propose and develop the projects and programmes necessary to implement specific policies for the integration of persons with disabilities;

(b) To carry out whatever actions may be necessary to assess compliance with Act No. 22431 (on the comprehensive protection system for persons with disabilities) and follow-up measures, proposing whatever additional or corrective instruments may be necessary to ensure that its goals are achieved;

(c) To coordinate disability programmes developed by private- and public-sector entities, organizing a Centre for Computerized Information and Documentation on disability;

(d) To oversee the application of special funds, ensuring their use to promote the integration of persons with disabilities and stimulate disability-related research programmes;

(e) To coordinate the implementation of policies for persons with disabilities with the provinces and municipalities, under the authority of the Federal Disability Council established by Act No. 24657;

(f) To participate, in a binding manner, in the analysis of resolutions proposed at the Coordinating Committee for Disability Programmes, in discharge of the functions assigned to it under article 3 of Decree No. 153/96;

(g) To contribute to all initiatives aimed at ensuring adequate benefits cover for prevention, assistance and the comprehensive rehabilitation of persons with disabilities;

(h) To contribute to the construction of training and skills development plans and programmes for personnel specializing in care for persons with disabilities;

(i) To plan, organize and support ongoing community education, awareness-raising and motivational campaigns relating to the problems associated with disability.

31. CONADIS is further responsible for assessing compliance with legislation governing the comprehensive protection system for persons with disabilities (Act No. 22431) and other legal and regulatory instruments relating to persons with disabilities. Its duties also include obtaining from government agencies the information it needs to fulfil its remit, fostering the establishment of special funds to provide for the integration of persons with disabilities and, to this end, promoting coordinated action between governmental and non-governmental agencies.

32. CONADIS operates under the authority of the National Social Policies Coordination Council, which is attached to the Office of the President. It is composed of a chairman, an executive board, an advisory committee and a technical committee. The chairman, who has equivalent rank and status to a Secretary of State, serves as the Commission's legal representative, overseeing and managing its operation. He is assisted in this task by an executive board currently composed of three directors and one coordinator, specialized in different aspects of disability (prevention, rehabilitation, maintenance assistance and equal opportunities), who provide the technical information needed for decision-making. They are supported by small teams of disability professionals and administrative staff.

33. The advisory committee brings representatives of associations of persons with different disabilities together in a free-flowing exchange that ensures the participation of the persons concerned and the consideration and defence of their interests. The technical committee coordinates this work with specific government departments, so preventing segregated treatment. The interrelationship between the committees allows for more efficient use and better distribution of the resources available in pursuit of the proposed goals.

34. Over the years, provincial disability councils and committees that conform to the model described have been progressively established across the country. Their operation is overseen by the Federal Disability Council, established under Act No. 24657, with the aim of extending anti-discrimination policies to all persons with disabilities in every part of the country. As a result, the structure of CONADIS as a government agency with branches at provincial and municipal level has not entailed any increase in public spending, since it operates with a very small technical and administrative team and works in coordination with the governmental agencies, such as health, labour or social development, and non-governmental agencies.

E. Office of the Secretary for Human Rights of the Ministry of Justice, Security and Human Rights

35. The main task of this Office is to promote and protect human rights in the country. The Office runs the following activities:

(a) Complaints and Procedures Programme, designed to receive complaints from individuals relating to conflicts that might constitute human rights violations, advising complainants and forwarding cases to the competent national authority;

(b) Legislation Programme, entailing participation in and assistance to the congressional human rights commissions;

(c) Institutional Relations Programme, aimed at fostering and maintaining good relations with domestic (State and private) and foreign human rights agencies;

(d) Federal Human Rights Council, responsible for linking and coordinating policies for promoting and guaranteeing human rights between national government and provincial governments; this Council ensures efficient coordination and a free-flowing exchange of communication that provides for centralized policy design combined with decentralized action, taking account of the specific situation in each province;

(e) Historical Reparation Programme. The Office of the Secretary for Human Rights is responsible for processing the benefits due to former internees detained by order of the National Executive and civilians tried by military courts prior to the restoration of democracy on 10 December 1983, and to the beneficiaries of disappeared persons;

(f) National Commission on the Right to an Identity, which expedites the search for disappeared children and determines the whereabouts of abducted and missing children whose identities are unknown, children born to mothers illegally deprived of their liberty, and other children whose identities are unknown because for various reasons they were separated from their biological parents;

(g) National Commission on the Enforced Disappearance of Persons (CONADEP), responsible for preserving and updating CONADEP files.

Part Two
Information relating to articles 2 to 7 of the Convention

IV. Article 2 of the Convention

A. Legal provisions for the protection of fundamental rights and anti-discrimination legislation

36. Since the submission of Argentina's previous report, important provisions directly or indirectly related to the fight against discrimination have been adopted, namely:

(a) National Migration Act (Act No. 25871), in force in Argentina since January 2004;

(b) Decree No. 1086/05 of 7 September 2005, approving the document entitled "Towards a National Plan against Discrimination";

(c) National Act on Comprehensive Protection of the Rights of Children and Adolescents (Act No. 26061, *Boletín Oficial*, 26 October 2006);

(d) Act No. 26130 (*Boletín Oficial*, 24 August 2006), allowing any person of legal age to undergo surgical methods of contraception under the health system;

(e) Act No. 26160 (*Boletín Oficial*, 29 November 2006), declaring a four-year state of emergency in order to halt the eviction of indigenous peoples, to permit territorial resettlement and to regularize their communal property;

(f) General Refugee Recognition and Protection Act (Act No. 26165, *Boletín Oficial*, 1 December 2006);

(g) Act No. 26162 on the Competence of the Committee on the Elimination of Racial Discrimination, adopted on 1 November 2006 and enacted on 24 November 2006;

(h) Act No. 26364 on Preventing and Punishing Human Trafficking and Assisting its Victims (*Boletín Oficial*, 30 April 2008);

(i) Resolution 671/2008 of the National Social Security Administration of 19 August 2008. This resolution establishes same-sex couples as partners, who are entitled to the other partner's pension in the event of the latter's death, or to the partner's invalidity pension or to his benefits from the public welfare system or the capital accumulation scheme.

37. The texts of the above-mentioned legal provisions are given in Annex I.

B. Anti-discrimination case law

38. Several rulings have tended to confirm the principles of anti-discrimination that are enshrined in national legislation. Examples include the following, grouped according to the cause of discrimination.

1. Discrimination on grounds of nationality

39. *Hooft, Pedro Cornelio Federico v. the Province of Buenos Aires – declaratory action challenging constitutionality*. National Supreme Court of Justice, 16 November 2004. Pedro Cornelio Federico Hooft filed a complaint against the Province of Buenos Aires in order to have article 177 of the province's Constitution declared unconstitutional and inapplicable, on the grounds that it contradicted the National Constitution by restricting his right to be an appeal court judge — or cassation court judge — by requiring that to occupy such a position a person should, "have been born on Argentine territory, or be the son of a native-born citizen if born in a foreign country". Mr. Hooft said that he had been born in Utrecht (the Netherlands) on 25 April 1942, had entered Argentina in 1948 and had obtained Argentine nationality in 1965. He alleges that the provision is unconstitutional, as is the interpretation, which makes Argentine nationality of origin a prerequisite for being a judge of a court of appeal in the Province of Buenos Aires. The Supreme Court held that article 23 of the American Convention on Human Rights (Pact of San José, Costa Rica) and article 25 of the International Covenant on Civil and Political Rights — both ranked equal to the National Constitution (art. 75, para. 22) — establish that "every citizen" shall enjoy (or shall have) "the following rights and opportunities" [...] "(c) To have access, on general terms of equality, to public functions in his country". In the light of such explicit principles, a provision such as article 177 of the Buenos Aires Constitution, which establishes, with regard to access to certain positions, that there are first-class Argentines ("citizens" in the Convention and Covenant) either "native-born" or "by choice", and second-class Argentines "naturalized" like the complainant, is tainted with a presumption of unconstitutionality, which could only be reversed if were proved conclusively that the provision is justified on the grounds of the substantial interest of the province. According to the Supreme Court, Mr. Hooft was discriminated against by the local rule not for being Argentine, but for being a "naturalized" Argentine; not on account of his nationality, but on account of the origin of his nationality. In effect, Mr. Hooft is Argentine, not because of his place of birth, nor because of the nationality of his parents, but because of his wish to become an Argentine citizen (and the willingness of Argentina to accept him as such). He is a judge of a provisional court of first instance, but is excluded from the possibility of becoming an appeal court judge because of his "national origin". His situation, therefore, corresponds to one of the grounds of discrimination that the international instruments prohibit (article 1, paragraph 1, of the American Convention on Human Rights, and article 26 of the International Covenant on Civil and Political Rights). This made the European

doctrine applicable, whereby the presence of any one of the grounds prohibited under article 14 of the European Convention on Human Rights (including "national origin"), taints the legislation containing that ground with a presumption or a suspicion of illegality, thus shifting the burden of proof. Finally the Court ruled that article 177 of the Constitution of the Province of Buenos Aires was unconstitutional.

40. On 4 September 2007, the National Supreme Court of Justice ruled on the case "Application for judicial review by Luisa Aguilera Mariaca and Antonio Reyes Barja, representing Daniela Reyes Aguilera in the case *Reyes Aguilera, Daniela v. the State*". The facts concerned a woman of Bolivian nationality born on 8 August 1989, who had suffered from a congenital 100 per cent disability from birth and who had obtained permanent residency in Argentina subsequent to her entry to the country in 1999. Following the refusal of the administrative authorities to grant her the disability pension provided for in article 9 of Act No. 13478 (and its amendments), because she did not meet the 20-year minimum residency requirement for foreigners under annex I, article 1 (e) of Decree No. 432/97 (original version), which regulates that article, she filed *amparo* proceedings citing the unconstitutionality of the latter provision on the ground that it violated various rights protected by the National Constitution and by international instruments referred to in article 75, paragraph 22, of the Constitution. The adverse first instance ruling was upheld by the First Chamber of the Federal Social Security Court, which dismissed the case. The original judge maintained that the ability to grant pensions, which section 75, paragraph 20, of the National Constitution affords to the National Congress, is subject to the latter's full prudence and discretion, so that any requirements it establishes becomes an act of legislative policy which is not subject to the court's jurisdiction. The judge added that the disputed provision, by laying down different requirements for Argentine nationals and foreigners, did not imply discrimination on grounds of nationality, insofar as the fact that the law gives different treatment to situations that it considers different does not violate article 16 of the National Constitution, provided that there is no arbitrariness or unlawful persecution of persons or groups. In response to that ruling, the complainant filed an extraordinary appeal, followed by a complaint when that appeal was rejected. The Supreme Court held that the benefit in question, contrary to what had been found by the original judge, was not derived from the Congress' ability to "grant pensions" — traditionally known as ex gratia pensions — under article 75, paragraph 20, of the National Constitution (former art. 67, para. 17). The benefit was intended to cover absolutely extreme social contingencies, that is, situations that palpably and manifestly jeopardized the very "livelihood" (in the terms of the American Declaration of the Rights and Duties of Man, the Universal Declaration of Human Rights and Decree No. 432/97 itself), of a person lacking "resources or protection", to use the wording of the Decree. Article 9 of the above-mentioned International Covenant is also applicable to the case, since, as pointed out by the Committee on Economic, Social and Cultural Rights: "Social security and income-maintenance schemes are particularly important for persons with disabilities." The Committee recalled that, according to the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, States should ensure the provision of adequate income support to persons with disabilities who, owing to disability or disability-related factors, have temporarily lost or received a reduction in their income or have been denied employment opportunities. The judgement held that adding to those requirements a minimum residence, in this case of 20 years — even though it also applies to Argentine nationals, including those who are native-born — implies, given that livelihood cannot wait, pure and simple disregard for the right to social security, in the terms of the above-mentioned international texts of constitutional rank, to such an extent as to jeopardize the right to life, which is the first right of a human being, recognized and guaranteed by the National Constitution, and which constitutes an urgent obligation for "positive action" by the public authorities. The residency requirement laid down in section 1 (e) of Decree No. 432/97 (original version) therefore does not apply, on grounds of unconstitutionality, in

cases where all the other requirements without exception to qualify for a disability pension stipulated in that decree have been met.

2. Anti-trade union discrimination

41. Catalina Balaguer worked for the enterprise PEPSICO Argentina SRL. She was dismissed for "poor performance", but claimed that the decision to dismiss her was a result of "being the wife of the trade union representative L.N. and of his trade union activities, and that, given that the wife of the trade union representative S.M. had also been dismissed, the dismissals constituted a form of reprisal". The case *Balaguer, Catalina v. PEPSICO de Argentina SRL* was settled on 10 March 2004 by Chamber VI of the National Labour Court of Appeal, which upheld the first instance ruling. The upshot of the case was the reinstatement of the complainant to her post, on the basis of anti-discrimination legislation, and the sentencing of the enterprise to pay her unpaid wages up to the time of her reinstatement.

42. On 31 May 2005, Chamber IX of the National Labour Court heard the case *Greppi, Laura K. v. Telefónica de Argentina SA*. The main issue was the reiterated acknowledgement by the accused enterprise that it had dismissed the complainant for no reason and, at the same time, its firm recognition of the discriminatory nature of the dismissal, which the first instance ruling considered reliably attested. The trigger for the direct dismissal had been the e-mail that Laura Greppi had sent to her work colleagues, urging them to take peaceful collective action in solidarity with the workers of Aerolíneas Argentinas. Applying article 1 of Act No. 23592, the judgement upheld the first instance ruling and ordered the reinstatement of the worker to her post.

3. Discrimination by sexual identity and gender

43. J.A.C. and A.M.P., representing the rights of their son M.G.C., applied to the court for permission to undertake a surgical operation in order to effect a sex change from male to female and to change their son's name. The case came up in the locality of Villa Dolores, Province of Córdoba, on 21 September 2007, and was decided by the Civil, Commercial, Conciliation and Family Court of Villa Dolores. The presiding judge decided to accept the application made by J.A.C. and A.M.P. on behalf of their under-age son, M.G.C., which the latter confirmed, and therefore ordered the following measures: (a) "To authorize a surgical operation to be conducted on the genital organs of the minor, in accordance with best medical practices, applying whatever methods are necessary to change or reassign his sex from male to female. The surgical operation which is herewith authorized may be performed as from the date this decision is delivered, at whatever time and moment the health professionals attending the minor consider convenient and so prescribe, a written account of which must be kept in the relevant clinical records. Prior to the surgery, the physician or medical team in charge of conducting the operation must obtain delivery in writing of the necessary "informed consent", both of the minor and of his parents, which must concur and which must subsequently be kept on record"; (b) "To obtain from the parents of the minor, in accordance with the rights and obligations pertaining to their parental responsibilities, the assurance of appropriate supervision or interdisciplinary supervision by a psychologist, psychiatrist, endocrinologist and surgeon, both prior to and following the surgical operation, until their son comes of age"; (c) "Ascertain that, once the surgical operation authorized herewith has been duly registered, the necessary steps are taken to rectify the minor's birth certificate, Certificate No..., Page No..., Volume No..., Year ..., of the Register of the Civil Status and Capacity of Persons, of the Municipality of this Township, giving due reference to the present decision in the margin, replacing the existing first names appearing there 'M.G.' by 'C.G.' and the 'male' indication of sex by 'female', leaving the remainder of the recorded data unchanged; taking steps furthermore to issue a new National Identity Document, where the data have been amended, that is, giving

the name as 'C.G.' C., and the sex as 'female', for which purpose the necessary documents shall be issued to the local Municipality (Civil Registry), General Directorate, and the National Register of Persons".

4. Discrimination against persons in a situation of poverty and/or exclusion

44. On 7 November 2005, the Federal Court of Administrative Disputes No. 1, Secretariat No. 1, heard the case *Unión de Usuarios y Consumidores v. EN-M VE Inf-Sec Transporte – Dto 104/01*, in which an application was made to end the violation of the principle of uniformity which should prevail in the offer of public services by the defendant to the detriment of the user(s) of the Once/Moreno electric branch line, and to ensure that the other co-defendants fulfilled their duty of supervision over that service.

45. The user(s) of the Once/Moreno electric line argued that they were being offered a service of clearly worse quality than that offered to the user(s) of the Retiro/Tigre line, also licensed to Trenes de Buenos Aires (TBA). The judgement held that "the prohibition of discrimination" (in any of its prohibited forms and especially, for the purposes of the case in hand, where it arises from the social condition of people and from their wealth or poverty) is related — as Alain Touraine points out — to the enforcement of the universal principle of equality among persons, which as we know, like that of liberty, is essential to human dignity. Similarly, we are also aware that equality before the law, without which there can be no democracy, does not consist only in attributing the same rights to all citizens, but, much more than that, in providing a means to combat social inequalities, in the name of moral rights". Anti-discrimination guarantees were substantially extended with the reform of 1994. The new article 37 guarantees equality with respect to political rights, establishing in particular real equality of opportunity between men and women. Article 75, paragraph 19, refers to fostering equal opportunities and possibilities "with no discrimination whatsoever", while paragraph 23 instructs the Congress "to legislate and promote positive measures guaranteeing truly equal opportunities, and the full benefit and exercise" of the rights recognized by the Constitution "and by the international human rights treaties in force". Article 43 allows *amparo* proceedings "against any form of discrimination", without adding any kind of restriction, while article 42 guarantees for consumers and users "fair and dignified conditions of treatment". Article 75, paragraph 22, gives constitutional rank to a series of international instruments ratified by our country, which are incorporated into the domestic legal system on an equal footing with the National Constitution, making up a real federal corpus of constitutionality, and which include many norms related to non-discrimination and equal treatment, such as the American Declaration of the Rights and Duties of Man (art. 2), the Universal Declaration of Human Rights (arts. 1, 2, 7 and 23), the American Convention on Human Rights (arts. 1 and 24), and the International Covenant on Economic, Social and Cultural Rights (arts. 2, 3 and 7). Similar provisions are contained in the International Covenant on Civil and Political Rights (arts. 2, 3, 24 and 26), the International Convention on the Elimination of All Forms of Racial Discrimination (arts. 1 and 5), the Convention on the Elimination of All Forms of Discrimination against Women (arts. 1–4, 11 and 15) and the Convention on the Rights of the Child (arts. 1 and 2). It may be added that the norm referred to at the beginning also covers all international conventions of the International Labour Organization, which, once ratified, become part of our domestic legal system, taking precedence over domestic legislation.

46. The judge confirmed that there was inequality of treatment on the legal plane, and that the conditions prevailing in the offer of service also indicated that the user(s) of the Sarmiento Line received inferior treatment to that offered on the Mitre Line, such treatment being held in the first place — regardless of whether it was deliberate, which, as shown, is irrelevant for the purpose of establishing the point — against the licensee, Trenes de

Buenos Aires SA, and against the other co-defendants, on the grounds that they have a duty of supervision.

47. The ruling held that the case indeed reflected a presumption of discrimination which is to be prohibited — as expressly stipulated in the Constitution — on the grounds that unequal treatment is unjustified, and therefore unjust. "(...) In fact such omissions — added to the lack of cleanliness which I also noticed in the facilities of the Sarmiento Line, to the lack of new rolling stock (by that I mean the PUMA carriages), the delays this gives rise to, and the other manifestly unjustified deficiencies to which the expert has referred in his report — tally entirely with the observations I have made of the second-rate treatment meted out to passengers on this Line, a form of inferior treatment which cannot be detached from the fact (confirmed by the surveys, beyond the public and well-known nature of the fact) of their poorer social condition in comparison with users of the Mitre Line. It is as if the inferior or more insecure social condition might justify, even unconsciously, the offer of a service of inferior quality, and this is no discovery, because precisely it is a typical consequence which invariably accompanies discrimination, when this occurs on account of the social status of the victim; hence the prohibition. Just as in a democracy no person can claim greater consideration or respect on the grounds of social status or position, similarly no one should be expected on those grounds to be denied the consideration and respect he deserves and is owed. And in the second place, as it is unacceptable to assume that all or the majority of users of the Sarmiento Line spend their time, during their journeys, smashing windows and seats (which would be truly astonishing), I believe one may be allowed to suspect that this case is really defamatory with regard to those users, and if it amounts to collective defamation, the situation is even more serious, apart from being more complicated, because discrimination founded on this sort of defamation is not directed at one individual in particular, even though the suffering it causes is perceived individually, but against an indeterminate group of persons, which tends to aggravate the effect to an extent which is no longer even measurable, since, because it occurs regularly, may easily lead to violent behaviour (...)".

C. Management of the National Institute against Discrimination, Xenophobia and Racism (INADI)

48. At present INADI works as follows:

1. Anti-Discrimination Area

49. One of the main objectives of this area is to ensure the implementation of the National Plan against Discrimination. Progress in this respect has already been reported.

2. Advisory Council

50. As it is structured at present, INADI has an Advisory Council which takes an active part in decision-making in the area of anti-discrimination policies. This Council works on the principle of gender equality between women and men and addresses the relevant themes of African descent, gender, HIV/AIDS, the elderly, children, youth and sexual diversity.

3. Cooperation with civil society

51. Cooperation with the various areas of activity of civil society is also conducted through civil society forums, which deal with training for anti-discriminatory action and policies, the joint management of INADI's own initiatives and coordination with other ministries and/or provincial and municipal governments. The forums focus on monitoring, development, support for their own and outside initiatives and joint management.

4. Prevention and investigation of discriminatory practices

52. Through dissemination, the purpose of prevention and investigation is to provide information about the organization's activities and to conduct investigation and training with respect to discrimination, xenophobia and racism. The following areas are covered:

5. Scientific research and training

53. INADI is working to prepare a Discrimination Map for every province in the country. These maps provide INADI with a tool for the elaboration of public policies, for the preparation of campaigns and as a means of dialogue with the authorities in every province and township. For the time being, surveys have been completed for the City of Buenos Aires and the Province of Buenos Aires. Data are currently being analysed for Entre Ríos and Tucumán. The survey reports are numbered as follows: File No. 1: City of Buenos Aires; File No. 2: Greater Buenos Aires; File No. 3: Province of Tucumán; File No. 4: Province of Entre Ríos; Province of Catamarca; Province of Chubut; Province of Córdoba; Province of Corrientes; Province of Mendoza; Province of Santa Fe; Comparative study covering the provinces of Corrientes, Córdoba, Chubut, Mendoza, Santa Fe, Catamarca, Tucumán, Entre Ríos, and including the Autonomous City of Buenos Aires and Greater Buenos Aires.

6. Network of researchers

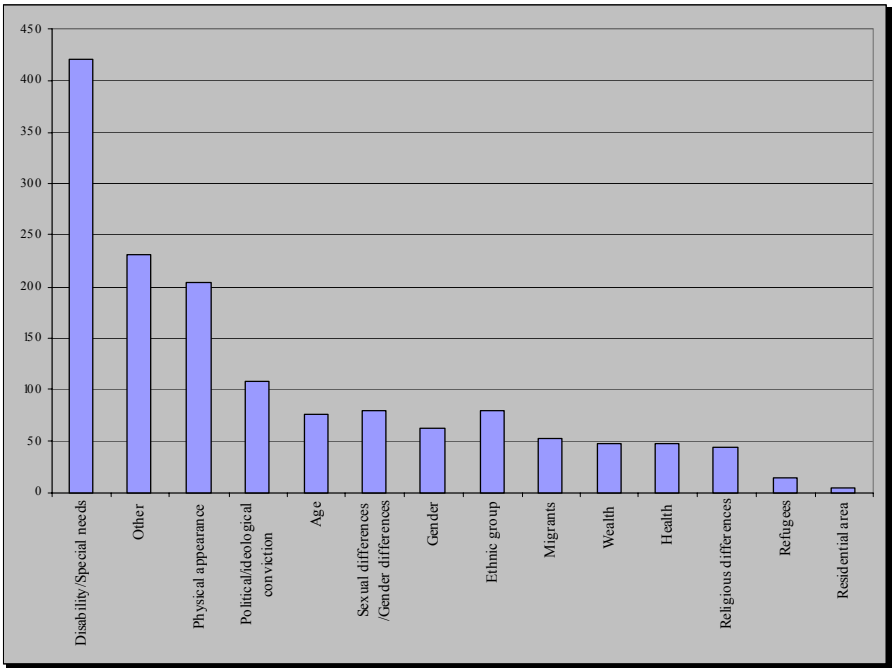
54. The purpose of this initiative — currently in full development — is to coordinate INADI's activities with those of the country's professionals and academics, who are engaged in researching aspects of discrimination and affirmative action, from different points of view and with different sets of problems in mind. The idea is to generate areas of exchange in order to allow the active participation of institutions with an academic background and others devoted to research in the formulation of public policies in favour of non-discrimination. The Network is organized on the basis of two criteria: one thematic, ensuring coordination between centres and professionals across the country who are currently working in the same field of knowledge; and the other regional, bringing together all researchers working on specific problems at a local level in conjunction with INADI's offices in the provinces.

7. Area of assistance to victims of discrimination

55. Discriminatory practices vary considerably and cover a very broad spectrum. INADI is authorized to receive complaints against the discriminatory acts listed in Act No. 23592, which stipulates as follows: "Any person who arbitrarily prevents, obstructs, restricts or in any way impairs the full exercise on an equal footing of the fundamental rights and guarantees recognized in the National Constitution, shall be obliged, at the request of the injured party, to render the discriminatory act without effect or cease to perform it and repair the moral and material damage caused. For the purposes of this article, particular consideration shall be given to discriminatory acts or omissions founded on motives such as race, religion, nationality, ideology, political or trade union opinion, sex, wealth, social status or physical characteristics." The enumeration of discrimination motives referred to in the law is not restrictive but merely illustrative. The definition is supplemented with further examples provided by human rights organizations.

56. All persons living in the country have access to a free publicly available telephone line (0800-999-2345). The service is active every day of the week, including public holidays, on a 24-hour basis.

57. In 2007, a total of 1,450 calls were received on the 0800 line.



58. In dealing with a case that refers to any one of the acts described, INADI adopts an interdisciplinary approach. The first step is to conduct a good-offices management exercise, in order to decide which means are required to put an end to the discriminatory act or practice. If the action taken immediately does not succeed, a complaint is filed with the organization. This complaint is substantiated by the Institute's legal advisers, with the help of assistants of the Law Faculty of the University of Buenos Aires. This procedure leads to the drafting of a technical opinion.

59. The Free Legal Advice service (*Guardia Jurídica Gratuita*) offered by INADI was set up in November 2006, in response to the significant increase in the number of consultations and/or complaints received after the service was launched. The purpose of the Guardia Jurídica is to provide professional advice to victimized individuals or groups who apply to INADI. The service was first offered in November 2006, when the number of people attended increased.

60. The following table shows the number of consultations received each month since the launch of the Guardia Jurídica service, from November 2006 until 31 July 2007.

Year	*Month*	*No. of consultations*	*Total*
2006	November (20 to 30)	83	
	December	134	217
2007	January	164	
	February	185	
	March	180	
	April	169	
	May	165	
	June	114	
	July	130	
	August	153	1 107

61. Since the scheme was launched, a daily average of 5.5 consultations were received and a monthly average of 165.5. A total of 1,107 cases were dealt with from the beginning of the year to 31 July.

8. Rapid dispute resolution

62. The rapid dispute resolution unit has the following functions: bringing suits, offering guidance, providing conciliation services and/or making referrals. Cases handled by the rapid dispute resolution unit are referred to it by the Guardia Jurídica, the 0800 helpline or our complaints centre. In general, the situations dealt with by the rapid dispute resolution unit are those that fall within the jurisdiction of Act No. 23592 and those that, although they are beyond the scope of a strict interpretation of the Act, the Institute — as a human rights organization — nevertheless addresses. Consequently, the situations are generally complex ones that cannot be resolved by any other government body and involve vulnerable people requesting assistance. The unit aims to handle the cases referred to it in such a way as to quickly put a stop to the specific cause of discrimination or vulnerability.

63. Cases dealt with in 2006 (see table below):

2006	Directors: Oteiza - Llamosas	8 months	January–August	62
	Directors: Lubertino - Mouratian	3 months	September–December	60

64. In 2006, 49 per cent of cases were lodged in the first three months of the new board's term of office.

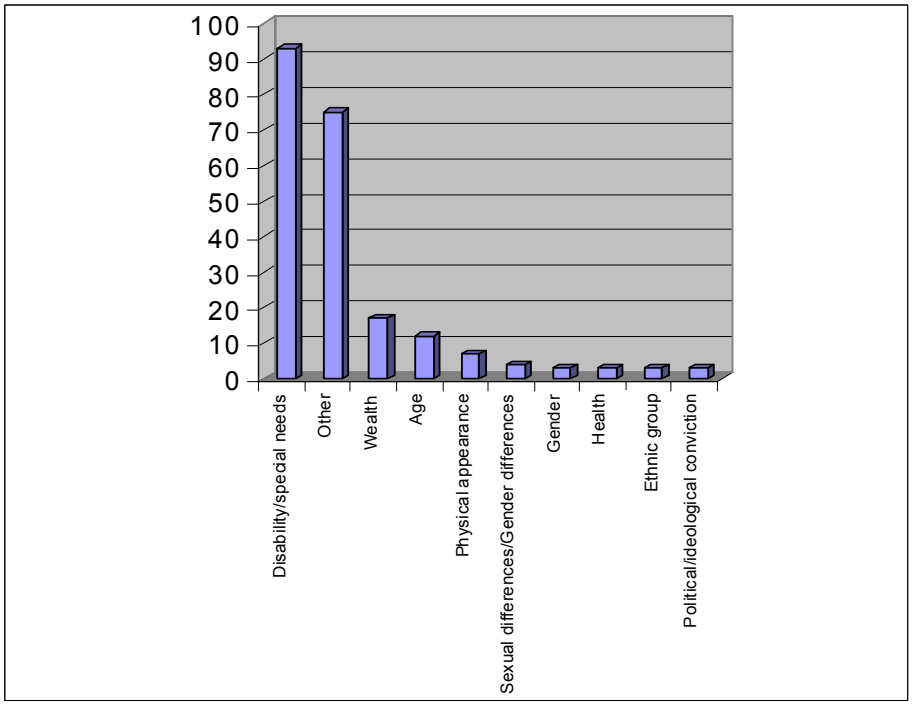
65. In the first quarter of 2007, the rapid dispute resolution unit handled a total of 104 complaints, while during the same period of 2006 only 32 complaints were lodged. Between April and July 2007, the number of complaints rose at the same rate, with 56 lodged, compared to 21 in the corresponding period of 2006.

2006–2007

	2006	*2007*	*2008*
January	2	36	24
February	19	13	57
March	11	55	
April	5	22	
May	7	18	
June	3	16	
July	6	16	
August	9	16	
September	-	21	
October	-	26	
November	-	18	
December	-	11	
Total	**62**	**268**	**81**

66. A comparison between the period January-August of 2006 and the corresponding period of 2007 shows that the number of complaints received by the unit trebled, as a result of the implementation of specific policies that made it possible to handle and resolve disputes more effectively.

67. Complaints lodged in 2007 (see chart below):



9. Complaints Centre

68. From 2006, the Complaints Centre's workload doubled, rising from a monthly average of 55 complaints in the period January-August (final period of the previous board) to a monthly average of 121.5 complaints in the last four months of 2006.

Complaints lodged in 2006

2006	8 months	January–August	440
	3 months	September–December	486

10. Legal department

69. The primary role of the legal department is to issue INADI special technical opinions, as set out in article 4 of Act No. 24515. The tasks carried out by the department include: receiving, classifying and replying to official documents; preparing specialized legal reports; providing free legal advice to individuals; writing general recommendations; and drafting opinions.

70. For the Committee's information, some of the most important opinions issued in the period 2006–2008 are set out below, categorized by type of discrimination.

Discrimination on the ground of health

71. Complaint ME No. 660/07, "*J.H.B. v. Argentine Army*". The complainant, while serving in the Argentine army, discovered in 2003 that he was an asymptomatic carrier of HIV. Following an investigation by the military authorities, the medical board found him fit for all service duties. Subsequently, after developing stress symptoms, the army conducted

a further investigation, which found him partially unfit for work (10 per cent incapacity) following diagnosis of a supposed adjustment disorder. INADI found that J.H.B. was forced to take retirement as a result of his illness and not necessarily as a result of an adjustment disorder.

Discrimination on the ground of disability

72. Complaint ME 3331/07, "*C.G.A. v. Omint S.A. de Servicios*". The complainant declared that the private health service provider Omint S.A. de Servicios in Córdoba (province of Córdoba) had withdrawn his health cover and that of his wife and three children, when it was discovered that one of them was suffering from hypoacousia. In view of national and international law, and existing jurisprudence, the Institute found that the respondent's action constituted discrimination under the provisions of article 1 of Act No. 23,592. This case involved the principle of the right to equality in relation to the right to health.

Workplace discrimination

73. Complaint MFN 1051/05, "*L.A. v. Consolidar S.A.*". The complainant stated that relations at work had been completely normal, that she had no record of disciplinary sanctions, that, on the contrary, she was one of the best sales assistants, until November 2003, when the company appointed D.R.C. as supervisor and, the following month, F.R. as manager. The men were friends and conspired to discriminate against the complainant. INADI held that the behaviour attributed to D.C. was discriminatory in that it consisted of numerous acts of persistently excessive use of managerial authority specifically targeting L.A. and treating her in a different, unfair and cruel way. The key characteristic of discrimination is the act of preventing the victim from enjoying his or her rights under equitable conditions. D.C.'s behaviour precisely violated her right to work and labour law, given that those rights should be enjoyed freely, without torture or unnecessary humiliation. "It is known that workplace harassment or mobbing is characterized by aggressive behaviour at the emotional and mental levels, and may even affect physical health. Mobbing can be defined as deliberate and persistent verbal and non-verbal abuse targeting a worker, who has previously carried out his or her duties in a satisfactory or even excellent manner, by an individual or a group seeking thereby to discredit and undermine him or her emotionally with a view to impeding or reducing his or her capacity to work and thereby make it possible to force the person out of the workplace through different types of illegal, unlawful or disrespectful procedures, which result in the worker losing his or her self-respect as a worker." (See *Mobbing Laboral,* Cristina Giuntoli, De Palma, 2007.) This process can take many forms and many of them were used by D.C., as was clear from the witness statements accompanying the case. These included hostile acts which, taken in isolation, might appear insignificant but if practised repeatedly can have effects which are harmful in the long term. These acts could include: publicly discrediting the victim(s), by systematically blaming them for mistakes, and by expressing contempt for, or criticism of, their work; systematically pressurizing them; persistently and deliberately mistreating them using verbal and non-verbal means; criticizing their physical appearance; shouting at them and reprimanding them; pretending they do not exist in personal contacts or at meetings; and constantly threatening them with dismissal.

Discrimination on the grounds of sexual orientation and gender identity

74. Complaint ME 2766/07, "*E.A.Y. v. Caja Prevision y Seguro Médico de la Provincia de Buenos Aires*". E.A.Y. reported that on 28 April 2003 he started proceedings concerning pension benefits at the death of his partner, Dr. D.H.O.B., with the Caja de Previsión y Seguro Médico de la Provincia de Buenos Aires, with whom Dr. O.B. had a policy. The complainant stated that on 19 September 2003 the board of directors had decided to reject

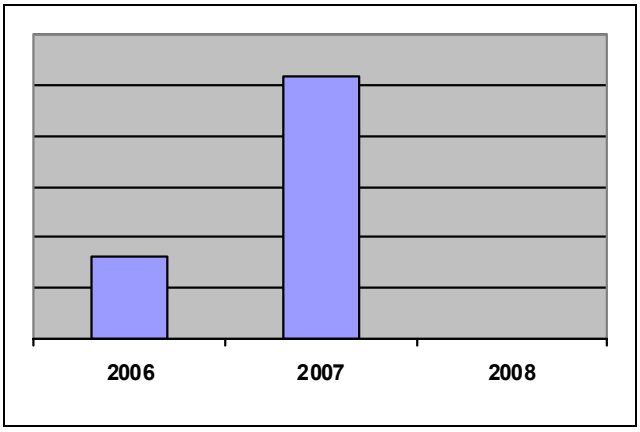
the appeal lodged by him, and he added that the respondent's unfavourable decision was based on the homosexual (sic) nature of his relationship with Dr. O.B. and that, according to E.A.Y., the respondent maintained that homosexual couples were not entitled to welfare benefits. The Institute found that international conventions establish the "right to family life", maintaining that the family is "the natural and fundamental element of society" and that, therefore, everyone has "the right to found a family" (see Universal Declaration of Human Rights (art. 6, para. 3); International Covenant on Economic, Social and Cultural Rights (art. 10, para. 1); International Covenant on Civil and Political Rights (art. 23, para. 1); American Convention on Human Rights (art. 17, para. 1) and American Declaration of the Rights and Duties Of Man (art. VI)). Likewise, article 14 *bis* of the National Constitution establishes as an obligation of the State full family protection; a protection which is enshrined in all the provincial constitutions and in article 37 of the Constitution of the Autonomous City of Buenos Aires. Following reform of the Constitution in 1994, the prohibition of negative discrimination was incorporated expressly in the charters of different bodies, and likewise in the Constitution of the Autonomous City of Buenos Aires, under the provisions of article 11. The constitutional reform established a litigation system for explicit or implicit forms of negative discrimination, with specific reference to sexual orientation. Thus, article 16 establishes formal and social equality; in other words, simple formal equality is not sufficient without real equality of opportunity, which entails an obligation on the part of the State to remove any obstacles that hamper the development of individuals. Since the principle of equality before the law is recognized, all discriminatory treatment of a legal nature is forbidden. Likewise, article 19 of the National Constitution establishes the right to privacy, which entails the legal protection of the right to be different and the exercise of this right. The ruling found that since the approval of the public registry of civil partnerships in the City of Buenos Aires, de facto couples are entitled to benefits which previously they were not, such as the possibility of extending social welfare entitlements to a partner, without distinction on the basis of sexual orientation. Consequently, one partner in a gay or lesbian couple can be designated as the beneficiary of the social insurance benefits of the other, whether the entitlement be granted on the basis of working as a dependant, as an independent worker, or on the basis of retirement (...). If the social insurance bodies recognize the contributor's partner, without distinction on the basis of sexual orientation, it is contrary to the law and all logic for those bodies to refuse death benefits on the grounds of the sexual orientation of the contributor's partner (...). It is contrary to the National Constitution, to domestic law drafted in compliance with the Constitution and to international conventions which have constitutional status. The fact that inhabitants of the Autonomous City of Buenos Aires have rights denied to those Argentine citizens not living there, and consequently not protected by its legislation, is an intolerable discrimination. Finally, the Institute found that on the basis of the arguments presented and in the light of human rights (recognized in both domestic and international legislation), a family is worthy of the protection of the State as long as there is proof of lasting affective ties and mutual affective and material support, so that the concept of family extends to two individuals of the same sex living together, with or without children. Therefore, all forms of family group must be given minimum legal protection, which cannot be overruled under any legislation below the Constitution. In this sense, refusing the benefit requested by the complainant on the basis of the homosexual nature of the couple formed by him and Dr. O.B. represents a clear violation of article 1 of Act No. 23592.

11. INADI funding

75. With respect to the concern raised by the Committee in paragraph 10 of the concluding observations issued following its consideration of Argentina's previous report and referring to the reduction in INADI funding, the following points may be made.

76. In 2006, the INADI budget was 1,954,000 pesos; in 2007, 4,271,000 pesos; and in 2008, 10,197,000 pesos.

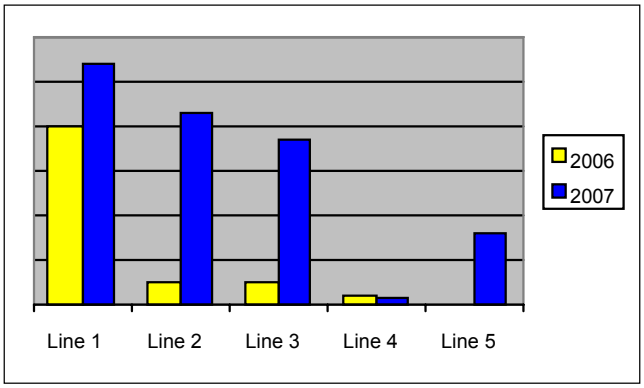
77. The 2007 budget represents an increase of 118.5 per cent compared to 2006 and the proposed budget for 2008 represents an increase of 262.33 per cent.



78. Compared to the budget implementation in the first half of 2007, and in spite of the substantial increase compared to the first half of the previous year, the difference in the 2008 budget implementation is significant.

(Expressed as a percentage)

	2006	*2007*
Line 1	40.03	53.92
Line 2	5.02	42.64
Line 3	4.88	36.93
Line 4	2.19	1.59
Line 5	0	16.19



D. National Plan against Discrimination

79. As indicated in the previous report, in October 2001 the United Nations High Commissioner for Human Rights visited Argentina to promote the implementation in the country of the conclusions of the World Conference against Racism, Racial Discrimination,

Xenophobia and Related Intolerance. In this context, the Argentine Republic made a commitment to elaborate a National Plan against Discrimination which would follow up the proposals and conclusions of the Durban Declaration and Programme of Action.

80. The work of designing, preparing and implementing the project was carried out between 2002 and 2004 with the support of the Office of the High Commissioner for Human Rights. The guiding principle behind the project was that the plan should be developed on the basis of a nationwide consultation with sectors affected by these practices, with government departments, non-governmental organizations and universities. When this work was completed, in May 2005, the report was submitted to the President's office for consideration. In 2003, four missions with delegations made up of between three and five people representing institutions belonging to the planning committee visited the following places:

(a) Posadas, Misiones province (3–6 June). Misiones is situated in the north-east of the country, 1,100 kilometres from Buenos Aires, on the border with Brazil and Paraguay;

(b) Los Polvorines, municipality of Malvinas Argentinas (26 August). This town is 50 kilometres from Buenos Aires and is a district in the "second urban belt" of the capital;

(c) General Roca, Rio Negro province (3–5 November). This town is in the south-east of the country, 1,200 kilometres from Buenos Aires;

(d) Neuquén (6 November). This town is the capital of the province of the same name and is situated in the foothills of the Andes, 1,200 kilometres from Buenos Aires.

81. The government coordinating group also held regular briefing and oversight meetings.

82. From April 2004, the following regional visits took place:

(a) Tierra del Fuego province (28 April–1 May). The province is situated in the extreme south of the country, 3,100 kilometres from Buenos Aires. Visits were made to Ushuaia and Río Grande;

(b) Córdoba province (26–29 May). The province is situated in the centre of the country, 700 kilometres from Buenos Aires. Visits were made to Córdoba and Río Cuarto;

(c) Mendoza province (30 June–3 July). The province is situated in the western Andes, 1,100 kilometres from Buenos Aires. A visit was made to the city of Mendoza;

(d) La Plata (20 August). La Plata is the capital of the province of Buenos Aires and is 60 kilometres from the City of Buenos Aires;

(e) Salta province (22–25 September). The province is situated in the north-east of the country on the border with Bolivia, 1,700 kilometres from Buenos Aires. Visits were made to Salta, Orán and Tartagal (200 kilometres from Salta);

(f) Formosa province (28–29 December). The province is in the north-east on the border with Paraguay, 1,200 kilometres from Buenos Aires. A visit was made to the City of Formosa.

83. By late 2004, some 300 interviews had been conducted, 600 specific proposals had been processed and approximately 50 questionnaires or written contributions had been received from the groups interviewed. Members also took part in debates and sessions to provide and gather information.

84. In September 2005, on the occasion of the visit of the United Nations High Commissioner for Human Rights, Ms. Louise Arbour, the President of Argentina, Dr.

Néstor Kirchner, approved by Decree No. 1086/05 the National Plan against Discrimination, Xenophobia and Racism.

85. Article 1 states: "The document entitled 'Towards a National Plan against Discrimination – Discrimination in Argentina. Diagnosis and Proposals' is hereby approved as annexed to this decree and shall constitute the strategic guidance document of the National Plan against Discrimination." Article 2 states that INADI shall be the national body charged with coordinating the implementation of the proposals set out in the document approved by the decree.

86. On the basis of the specific functions attributed by Act No. 24515 establishing INADI, and under the provisions of Decree No. 1086/85, INADI took on the responsibility of promoting all necessary action to address and make effective the recommendations of the National Plan against Discrimination. This task was revitalized in September 2006 following the appointment of the new governing board of the Institute, who emphasized the importance of national measures against discriminatory practices in whatever form they might occur in the country.

87. In compliance with article 4 of Decree No. 1086/05, inviting the provinces, the Autonomous City of Buenos Aires and provincial municipalities to adhere to the provisions of the decree and to participate in the studies and action necessary to elaborate the National Plan against Discrimination, the provinces of Chaco, Córdoba, Misiones, La Pampa, Tucumán and the Autonomous City of Buenos Aires have adhered to the decree.

88. In general terms, discrimination is conceived in the National Plan against Discrimination as a set of social practices, which give rise to attitudes that cause marginalization, hostility and violence and whose roots lie in the structures of the State itself. Likewise, the Plan establishes that discriminatory social practices are not due to any characteristics possessed by the victim of such practices, but by the characteristics of the social group, society or State which is responsible for the discrimination. The Plan analyses current practices in Argentine society, both in terms of general phenomena and those which apply in particular situations (for example, migrants, persons with disabilities, indigenous peoples, etc.).

89. The objective of the National Plan against Discrimination is to elaborate specific proposals whose implementation will lead to reducing and/or eradicating discriminatory social practices current in Argentine society. Recommendations are made in the following forms: (1) General proposals; (2) Legislative proposals; (3) Proposals to be applied in different institutional areas (including the thematic areas identified in the diagnosis). Since September 2005, many of the proposals put forward in the National Plan against Discrimination have been implemented and many were reformulated and extended by INADI and other government bodies at the national, provincial and municipal levels.

90. With respect to the **general proposals**, the following recommendations were adopted:

(a) The State has recognized the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals claiming to be victims of discrimination (article 14 of the Convention), which represents substantial progress towards comprehensive implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. INADI has been designated as the competent national body by Act No. 26162;

(b) Likewise, the State has ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (by Act No. 26171) and the

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (by Act No. 26202);

(c) Act No. 25280 approved the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities. Following an Argentine initiative, in March 2007, the Committee provided for under article VI of the Convention was established;

(d) Act No. 26160 was passed on 1 November 2006, and published on 23 November 2006, declaring the emergency concerning the possession and ownership of the lands traditionally occupied by indigenous communities, whose legal person has been registered in the National Register of Indigenous Communities or with the competent provincial body or former bodies.

91. Since discrimination was added as one of the central issues on the political agenda, the National Congress has been debating the reform of Act. No. 23592 on discriminatory acts and Act No. 24515 on the establishment of INADI.

92. With regard to the **legislative proposals** contained in the National Plan against Discrimination, the Plan aims to review all existing legislation and offers specific recommendations for the country in a number of areas.

93. Some of the proposals that emerged from the Plan, combined with the action of many groups directly involved with various issues, led to the revision and/or adoption of the following national laws, amongst others:

(a) Act No. 26061: aimed at promoting the comprehensive protection of children, as called for in the Convention on the Rights of the Child, to replace the current Act No. 10903 and Act No. 22278 and amendments;

(b) Act No. 26160, declaring a four-year state of emergency in order to halt the evictions of indigenous peoples, to permit territorial reorganization and to regularize their communal property through registration in the land registry and the issue of the corresponding title deeds. Indigenous participation must be ensured in order to guarantee the handover of suitable land sufficient for human development;

(c) Act No. 26130, allowing surgical contraception for any adult person within the health system;

(d) Act No. 26165, on the recognition and protection of refugees, incorporating the highest standards of protection for asylum-seekers and refugees.

94. In the same context, in October 2006 INADI conducted a seminar for national legislators, at which the legislative reform proposals suggested in the Plan were submitted to the National Congress. The purpose of these proposals — entitled Legislation for Integrating Diversity in Equity — is to add discrimination issues to the legislative agenda and to encourage an undertaking on the part of the members of both Chambers to seek the adoption of the suggested initiatives.

95. The bulk of the recommendations contained in the National Plan are grouped into proposals according to institutional areas of implementation, as follows: administration of justice and legislation, public administration, education, security forces, communication media and health. The Institutional Area Proposals may in turn be subdivided into *Strategic Proposals*, which are general in scope and intended for gradual implementation, and *Immediate Action Proposals*, the early implementation of which cannot be delayed. In every institutional area of application a mention is made of the need to adjust the budget appropriation as an essential precondition of any effort to protect the rights of victimized groups.

96. The proposals for the Administration of Justice and Legislation area include:

(a) *Promoting the establishment and safeguarding the right of association of organizations committed to the defence and promotion of the rights of persons with different sexual orientation and gender identities, women involved in prostitution, indigenous peoples, persons of African descent, migrants and other ethnic, cultural, religious or linguistic groups or minorities.* In response, INADI has helped to organize civil society forums with the above characteristics, such as persons of African descent, migrants and refugees, indigenous peoples, etc. In addition, it supports the submission of proposals for measures specifically targeting the rights of persons belonging to different groups. These measures focus on encouraging citizens to participate in the formulation of public policies;

(b) *Guaranteeing access to justice for indigenous peoples.* In this respect INADI is providing backing for a group of indigenous communities in their complaints before the courts and their defence of other rights. It is particularly helping to publicize their territorial conflicts (regarding their ancestral lands and their opposition to logging operations and river contamination).

97. The recommendations concerning the area of Public Administration focus on a broad spectrum of discriminatory situations that need to be put right. The following remedies inter alia are proposed:

(a) *Strengthening administrative institutions set up to combat discrimination, enabling them to receive cases, investigate and act as mediators, and supporting the opening of branch offices throughout the national territory.* This is why INADI in its present phase has requested an extension of its budget in order to be in a position to offer support to measures taken as a result of this recommendation, a request that has been favourably received, as explained in a later section of this report;

(b) *Using 12 October, which is currently celebrated as "race day", as an occasion for historical reflection and intercultural dialogue.* The draft Executive Decree, which is designed to give a different meaning to and change the name of the National Holiday of 12 October to "Day of Cultural Diversity", is currently subject of joint consultations between various national organizations and ministries;

(c) *Developing public policies aimed at preventing, investigating and punishing national and international trafficking and smuggling of women and children, while offering protection and physical and psychological rehabilitation to victims.* For this purpose INADI installed an 0800 helpline to receive complaints and assists a number of civil society organizations belonging to the *No a la trata* (no to trafficking) network. This joint action by the State and civil society has had a positive impact on the search for solutions to the problem and has combined efforts to influence political decisions;

(d) *Developing comprehensive programmes for the prevention, punishment and eradication of domestic violence throughout the country, to include legal advice, medical and psychological treatment, and workplace and professional resettlement plans.* In this respect, INADI is conducting a national programme on Labour Equality targeting public as well as private institutions;

(e) *Creating suitable supervisory bodies to include organizations of persons with disabilities and rehabilitation professionals as speaking and voting members within the framework of related government organizations.* INADI has set up the forum of social organizations for persons with disabilities. A project has been launched to ensure accessibility to all public places throughout the country, while support is being given to following up and monitoring the United Nations and Inter-American Conventions on the Elimination of All Forms of Discrimination against Persons with Disabilities. The Institute

is at present engaged in implementing a programme to create awareness among small- and medium-sized enterprises in order to encourage them to recruit persons with disabilities;

(f) *Establishing a system of external audits on the Prison System, in different areas of the service, promoting external monitoring of places of detention by non-governmental organizations and as a matter of urgency increasing the budget for the feeding and minimum survival necessities of the prison population, and ensuring their effective application.* In this respect, INADI provides support for the action of the Forum of Incarcerated and Released Persons, which is actively engaged in developing activities aimed at dealing with these issues.

98. In the area of **Education**, the recommendations put forward by the National Plan include the following:

(a) Promoting, developing and subsidizing a National Training Plan intended for public officials, researchers, teachers at all levels of the education system and social communicators, aimed at providing training in the respect and defence of human rights, the understanding and reform of discrimination mechanisms and the eradication of racist, sexist and homophobic language usage in public and private institutions. In this area, INADI jointly with the national Ministry of Education has prepared material specially designed for distribution in schools, which includes the most important components of the National Plan against Discrimination;

(b) Designing and implementing a survey of school textbooks aimed at identifying and analysing discriminatory stereotypes which may originate in educational material, in order to prepare a proposal for the reform of whatever racist, sexist and homophobic language usage may be encountered. As a result, specific information has been added to primary school textbooks concerning discrimination, the Convention on Discrimination and the recommendations of the Durban World Conference. A programme has also been launched, in conjunction with private publishers, the Ministry of Education, Science and Technology, INADI, UNESCO and with the assistance of other organizations, such as the Economic Commission for Latin America and the Caribbean (ECLAC) and the Governments of the Republic of Bolivia and the Federative Republic of Brazil, to amend ethnocentric and sexist content in textbooks used by second cycle students;

(c) Offering sex education in schools, so as to ensure that children and adolescents may take decisions free of discrimination, coercion or violence, enjoy a suitable level of sexual health, ensure responsible procreation and avoid adolescent pregnancies. To this effect INADI has introduced a nationwide complaints system, which is designed to receive complaints regarding impediments encountered in terms of access to suitable information, prevention and other relevant programmes.

99. The organizations that belong to the Youth Forum will, together with INADI, monitor the scope and functioning of the sex education programmes that have been introduced so far.

100. With regard to the recommendation to undertake training activities in all spheres of public life, in order to encourage awareness of discrimination issues among the managerial staff and workers of each area sector (health, education, justice, security forces, migrations, public administration, etc.), it may be noted that:

(a) As far as the **Security Forces** are concerned, the National Plan against Discrimination gives priority to improving the professionalism and training standards required for police officials in all the provinces, by adding courses in human rights to the training provided and highlighting anti-discrimination subjects. INADI is currently preparing a training programme for the security forces;

(b) With regard to the **Communication Media**, the plan suggests taking steps to ensure that State broadcasting channels provide cultural, linguistic, sectoral and regional diversity (with a recommendation to make this effective in all the country's localities and regions and to incorporate languages in daily use in each area in the programming). In this respect it is worth noting the opening of the Discrimination in Radio and Television Observatory, an inter-institutional agency which coordinates the work of the Federal Broadcasting Committee (COMFER), the National Women's Council (CNM) and INADI.

101. A Media and Discrimination Forum has also been set up with the participation of journalists, observatories of the University of Buenos Aires, the National University of La Plata and the Union of Buenos Aires Press Workers (UTPBA), researchers and independent media in order to suggest possible action. A national consultation will be conducted for the purpose of putting forward a general recommendation on the non-discriminatory treatment of groups whose rights have been breached by discriminatory practices.

102. Lastly, the **Health** sector recommendations include the following:

(a) Emphasizing the need to implement a National Health System with universal coverage based on the principle that health is a right, offering full care free of charge to every inhabitant and/or resident in our country, without discrimination of any kind;

(b) Providing cultural mediators and interpreters for essential services in areas with a significant multilingualism problem (including people with impaired hearing, indigenous communities, other ethnic groups and migrant communities);

(c) Organizing training workshops for personnel working in health institutions in order to eradicate ill-treatment and discriminatory gender treatment;

(d) Promoting actions aimed at recognizing the rights of persons with different sexual orientations and gender identity within public and private health institutions of the various jurisdictions, in order to provide them with specialized orientation care, to avoid labelling them as "infectious/contagious patients" and to ensure that they are cared for and interned in places where their sexual orientation and gender identity are respected.

103. As a follow-up to these proposals, the Health and Discrimination Forum was established with the participation of a number of organizations working in the field of health. This forum has established a system for feeding information to different health reviews, with regular articles on issues of particular concern.

104. Lastly, the National Plan includes a ***Proposal for Application, Monitoring and Supervision***, based on a joint approach to initiatives and supervision by State agencies, social organizations dealing with discrimination issues and experts. As part of this proposal, INADI has convened all the provincial and national authorities whose participation and involvement is considered relevant and necessary for effective action to combat discrimination and promote the rights of diversities.

V. Article 3 of the Convention

105. As has been stated in earlier documents, no system comparable to the regime of apartheid exists in Argentina.

106. The belief is commonly held in Argentina, on the other hand, that there has been no population of African descent in the country since colonial times. According to the Gaviria Foundation and the University of Oxford, however, some 6 per cent of the Argentine population is of African descent (about 2 million people), and this is confirmed by a pilot test carried out under the auspices of the World Bank, which arrives at a similar figure.

107. Several civil society organizations and the National Institute to Combat Discrimination, Xenophobia and Racism are at present engaged in publicizing these activities. For example, in 2007 a book was published under the title *En la lucha curtida del camino ... Antología de literatura oral y escrita afroargentina* (in the dreadful struggle along the way ... Anthology of oral and written Afro-Argentine literature), as part of Afro-Argentine Culture Month, which provides the setting for two congresses and a series of cultural activities highlighting the Afro-Argentine population. Also in 2007, a seminar was held on the strategic planning of the Afro community of Buenos Aires. This year there are plans to hold a national Afro congress, which is to be attended by academics and artists of the Afro movement abroad as the culmination of the National Afro Network's activities covering all the regions of our country.

VI. Article 4 of the Convention

A. Prohibition and punishment of discriminatory activities

108. It has already been reported that the constitutional reform of 1994 incorporated *amparo* proceedings as "prompt and summary action against any act or omission by the public authorities or individuals, which immediately or imminently may damage, restrict, alter or threaten, in a clearly arbitrary or unlawful manner, the rights and guarantees recognized in this Constitution, or in any treaty or law" (art. 43, para. 1). In the second paragraph it is added that the action may be lodged "against any form of discrimination". The same constitutional provision establishes the legal proceedings known technically as "Habeas Corpus" and "Habeas Data", both of which may be used as defence against discrimination.

109. In addition to article 4 of this Convention, Act No. 23592, in force since 5 November 1988, punishes illegal and criminal activities related to discrimination. As its regulations have been incorporated in the Criminal Code, it is binding for all the country's inhabitants and social organizations, including political parties.

110. In reply to the Committee's observation on Argentina's previous report (CERD/C/65/CO/1, para. 9), it may be explained that, as a result of the federal structure of the Argentine State, no registries are kept containing data concerning complaints filed with prosecutors, courts or other bodies. As noted earlier, however, INADI does keep a record of the complaints it receives.

B. Training of security forces

111. With regard to the training of security forces, and in response to the comments in paragraph 13 of the Committee's concluding observations, the National Plan against Discrimination contains a proposal (No. 192) "to improve the professionalism and training standards required for police officials in all the provinces, by adding courses in human rights to the training provided and highlighting anti-discrimination issues".

112. As a follow-up to that proposal and in the light of the requirements and requests expressed by various jurisdictions with regard to police training and preparation, the National Programme for the Preparation, Training Support and Professional Modernization of Police and Security Forces (PRONACAP) was launched in 2005 under resolution No. 067 of the Internal Security Secretariat, with the aim of improving the standard of professionalism and training of the staff of those institutions.

113. Training courses, workshops and days were organized for the purpose, dealing with important issues related to: security and human rights, assistance to the victims of offences, migrant smuggling, women's rights and human trafficking.

114. Since 2005, within the framework of PRONACAP, the Executive Secretariat of the Internal Security Council has held several seminars on "Domestic Violence", run by instructors of the National Women's Council. In October 2006, as part of that initiative, a committee was set up with representatives of the following organizations: Internal Security Council, National Women's Council, General Directorate of Gender Policies of the Ministry of Security of the Province of Buenos Aires, National Correctional Prosecutor's Office No. 4, Argentine Naval Prefecture, Division of Care Centre for Victims of Sexual Violence of the Argentine Federal Police and the *Gendarmería Nacional Argentina*. This committee prepared the basic document entitled: "Proposed protocol of police intervention for the care, guidance and transfer of the victims of domestic violence", which was submitted for analysis and discussion to representatives of all the provinces on the occasion of the Days of Reflection and Debate: "Women's rights. Changing the paradigm", held on 22 and 23 March 2007 in the Secretariat for Internal Security. The Days were organized by the Ministry of the Interior, the Secretariat for Internal Security, the Executive Secretariat of the Internal Security Council, the National Women's Council and PRONACAP. This activity was run by the Association of Female Judges of the Argentine Republic and members of the committee.

115. It is also worth noting that, in order to optimize the efforts of the national security system, 15 workshops, 6 regional meetings and 1 national day of reflection and debate were held in the course of 2007, and were attended by more than 200 participants from different sectors (political authorities of the various jurisdictions, representatives of the provincial police bodies and the federal security forces, institutions responsible for police training and academic coordinators for security themes from various national universities). These workshops led to the adoption of common criteria for the organization of curricula and teaching-learning methodologies applied in police training institutes. The consensus arrived at is based on two themes: (a) Minimum, Basic National Police Training for Street Officers; and (b) Higher Technical Qualification in Public Security for Police Personnel.

116. Among the activities of the Programme for the Development of Police Capacities in Public Security and Human Rights (related to Proposal No. 190 of the National Plan), various showings were held of the exhibition "Anne Frank: a current history", which in its local version was combined with another entitled "From dictatorship to democracy: the application of human rights – 1976–2006". Both exhibitions were intended to encourage visitors to reflect on the value of human rights, coexistence in diversity and democracy in the present world.

117. In each town, the exhibitions were led by mixed groups made up of secondary school and university students, who interact with cadets of the police training institutes. Beforehand they are given preparation at an intensive seminar, where they are trained by experts, hear testimonies of the survivors of both tragedies, and discuss with specialists of local INADI delegations about the different forms of discrimination that are encountered in daily life. The main objectives of these seminars intended for those working as guides include:

(a) Providing information about Argentina's recent past, allowing them to distinguish and identify the consequences of those tragic years for the security forces and for society in general;

(b) Through the use of different teaching resources, encouraging trainees to reflect on the importance of protecting human rights, cultural diversity and republican values;

(c) Generating areas of dialogue and learning that strengthen the links between civil society and security institutions.

118. For its part the Internal Security Council has been publishing a series of "Security Papers", one issue of which consists of a file entirely dedicated to human trafficking, based on a multidisciplinary approach.

119. Lastly, as far as training for immigration officials is concerned, it is worth noting that in 2007 the National Directorate of Immigration of the Ministry of the Interior, in conjunction with the Ministry of Foreign Affairs and the United Nations Office of the High Commissioner for Refugees (UNHCR), ran several training courses for immigration officials, especially those manning border posts, on the subject of the human rights of migrants and the protection of asylum-seekers and refugees.

VII. Article 5 of the Convention

A. Protection of indigenous peoples

1. Statistics

120. According to the results of the Supplementary Survey on Indigenous Peoples, there are 600,329 people who are recognized as being members and/or first-generation descendants of members of the indigenous population. Information on this population is provided below based on the two classification criteria used for identification (self-identification and first-generation descent).

Figure 1
Nationwide indigenous population, disaggregated by self-identification and descent, 2004 and 2005

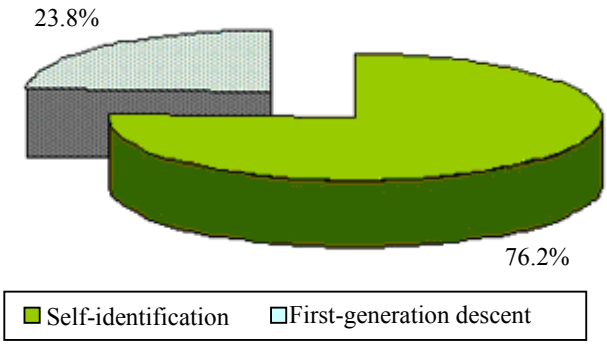


Table 1
Nationwide indigenous population, disaggregated by group, 2004 and 2005

Indigenous peoples	*Population*
Mapuche	113 680
Kolla	70 505
Toba	69 452
Wichí	40 036
Diaguita/Diaguita calchaquí	31 753
Guaraní	22 059

Indigenous peoples	*Population*
Ava guaraní	21 807
Tupí guaraní	16 365
Mocoví	15 837
Huarpe	14 633
Comechingón	10 863
Tehuelche	10 590
Rankulche	10 149
Mbyá guaraní	8 223
Quechua	6 739
Tonocoté	4 779
Charrúa	4 511
Pilagá	4 465
Chané	4 376
Aymara	4 104
Atacama	3 044
Chorote	2 613
Pampa	1 585
Omaguaca	1 553
Lule	854
Querandí	736
Ona	696
Sanavirón	563
Chulupí	553
Tapiete	524
Other	3 864
Unspecified	92 876
No response	9 371

Source: National Statistical and Census Institute (INDEC). Supplementary Survey on Indigenous Peoples, 2004–2005 (supplementing the National Population, Household and Housing Census of 2001).

[1] Includes persons belonging to the following peoples, among others: Abaucán, Abipón, Ansilta, Chaná, Inca, Maimará, Minuán, Ocloya, Olongasta, Pituil, Pular, Shagan, Tape, Tilcara, Tilián and Vilela. Data are not provided on these peoples individually because the samples are too small to serve as a basis for reasonably accurate estimates of the total number of members of each group.

[2] Includes cases in which the response to the question regarding membership in an indigenous group and/or status as a first-generation descendant was "do not know" or "another indigenous group".

2. National Registry of Indigenous Communities

121. In order to foster and promote respect for people's identities in the fullest sense of the word, clarify ambiguous situations and assign classifications that are in keeping with people's legal status, the former Secretariat of Social Development of the Office of the President, to which the National Institute of Indigenous Affairs (INAI) was attached, issued Directive No. 4811/96, in which it adjusted the guidelines used when authorizing the

registration of indigenous communities, simplified the requirements and set out the rules governing the provinces' joint exercise of these powers.

122. Under the terms of this directive, indigenous communities wishing to register as such and establish their status as legal entities are not required to use any specific model but may simply furnish a description of their own organizational structure. Nor are they required to keep official minutes or records or to prepare annual accounting statements. They may instead maintain internal records, and these records do not have to be certified or authorized by any other body.

123. The communities' status as legal entities allows them to handle their affairs on their own without the involvement of any public or private institution or individual. Such a community may, for example, act as the direct recipient of development project funding, hold land titles in its own name, etc.

124. The objectives of the National Registry of Indigenous Communities (RENACI) are as follows:

(a) To promote the registration of indigenous communities and to assist them in completing the registration process and providing the documentation required for that purpose. In some cases, these advisory services are provided at training workshops designed to expedite the registration procedure;

(b) To maintain an up-to-date list of registered and unregistered indigenous communities;

(c) To coordinate RENACI activities with those of provincial and municipal offices of indigenous affairs. The aim is to align the requirements for the registration, recognition and specification of the legal status granted to indigenous communities so that a single, comprehensive database may be set up;

(d) To establish local registries of their own or to make arrangements with the provinces for their operation.

125. A community retains its status as a legal entity so long as it is in existence and maintains the organizational structure it has described.

Registered indigenous communities (Directive No. 4811/96 of the former Secretariat of Social Development or provincial regulations)

A. National Registry of Indigenous Communities (RENACI)

Santiago del Estero	18
Catamarca	2
Chaco	25
Chubut	6
Entre Ríos	1
Formosa	4
Jujuy	6
La Pampa	3
Mendoza	13

Neuquén	15
Río Negro	6
Salta	64
San Juan	2
San Luis	1
Santa Fe	18
Santiago del Estero	22
Tucumán	12
Tierra del Fuego	1
Santa Cruz	2
Last updated: September 2007	221

B. Registered with the Public Registry Office of Chubut Province

Total **20**

Last updated: December 2004

Source: Public Registry Office.

C. Registered with the Provincial Registry Office for Indigenous Communities of Jujuy Province

Total **181**

Last updated: May 2006

Source: Provincial Registry Office for Indigenous Communities.

D. Registered with the Provincial Directorate for Guaraní Affairs of Misiones Province

Total **54**

Last updated: May 2006

Source: Provincial Directorate for Guaraní Affairs.

E. Registered with the Legal Entities Directorate of Río Negro Province

Total **8**

Last updated: February 2005

Source: Legal Entities Directorate.

Indigenous communities and associations registered under the provisions governing civil associations

A. Provincial Legal Entities Directorate of Buenos Aires Province

Total **2**

Last updated: December 2003

Source: Associations.

B. General Legal Entities Directorate of Chaco Province

Total **61**

Last updated: November 2004

Source: General Legal Entities Inspectorate.

C. General Legal Entities Inspectorate – Public Commercial Registry of Corrientes Province

Total **1**

Last updated: March 2006

Source: General Legal Entities Inspectorate.

D. General Legal Entities Inspectorate of Formosa Province

Total **95**

Last updated: August 2005

Source: General Legal Entities Inspectorate.

E. Provincial Registry as a Public Good Entity of La Pampa Province

Total **2**

Last updated: not determined

Source: Associations.

F. Provincial Legal Entities Directorate of Neuquén Province

Total **39**

Last updated: November 2004

Source: Provincial Legal Entities Directorate.

G. General Legal Entities Inspectorate of Santa Fe Province

Total **14**

Last updated: December 2004

Source: General Legal Entities Inspectorate.

H. Legal Entities Directorate of Salta Province

Total **262**

Last updated: March 2006

Source: Legal Entities Directorate.

I. Legal Entities Directorate of Tucumán Province

Total **7**

Last updated: May 2006

Source: Legal Entities Directorate.

Total **967**

Demographic data on communities registered with RENACI

Province	*Number of households*	*Number of persons*
Buenos Aires	485	1 935
Catamarca	71	375
Chaco	776	3 405
Chubut	85	348
Entre Ríos	33	135
Formosa	139	738
Jujuy	578	3 205
La Pampa	59	243
Mendoza	362	1 550
Misiones	958	4 216
Neuquén	362	1 551
Río Negro	345	1 765
Salta	3 245	22 606
San Juan	141	768
San Luis	17	77
Santa Cruz	40	221
Santa Fe	907	4 021
Santiago del Estero	656	2 996
Tierra del Fuego	49	189
Tucumán	991	5 589

126. The RENACI statistics are derived from census data provided by the communities at the time they registered as legal entities. There is no obligation to update this information, so it may differ somewhat from the actual situation in each province.

127. No such data are available for communities that have registered with the provincial registry offices.

3. Protection of the property of indigenous communities

128. As noted in earlier reports, article 75, paragraph 17, of the Constitution of Argentina assigns the following responsibilities to Congress: "To recognize the ethnic and cultural pre-existence of the indigenous peoples of Argentina; to guarantee respect for their identity and their right to bilingual and intercultural education; to recognize the legal capacity of their communities and the community possession and ownership of the lands they traditionally occupy; and to regulate the granting of other lands that are adequate and sufficient for human development; none of them shall be sold, transmitted or subject to liens or attachments; to guarantee their participation in issues related to their natural resources and in other interests affecting them. The provinces may jointly exercise these powers." Under this article, communal possession and ownership of lands traditionally used by such peoples is recognized, and provision is made for the transfer of other suitable lands that are sufficient for human development, none of which is to be entailed, conveyed or attached. This recognition of the right of the indigenous peoples of Argentina to own land communally that may not be entailed, transmitted, attached or taxed represents a modification of the principles of private ownership set out in the Civil Code for the purpose of protecting land as an element that helps to hold a community together.

129. Indigenous Property Act No. 26160, which was enacted on 1 November 2006, declares a four-year state of emergency (art. 1), starting from the date of the law's publication, covering the possession and ownership of lands traditionally occupied by indigenous communities registered as legal entities with the National Registry of Indigenous Communities or with the corresponding provincial or other pre-existing agency.

130. For the duration of the state of emergency, it also suspends execution of any eviction orders issued in connection with legal proceedings whose main or secondary objective is to evict the occupants of lands covered by the preceding article pursuant to any judicial process having an impact on indigenous communities' title to and/or ownership of such lands. The law directs that ownership by indigenous communities is to be traditional and public. It also establishes a special assistance fund of 30 million pesos for the country's indigenous communities. This fund is to be used to further the consolidation of traditional forms of land ownership under the Community Strengthening Programme (INAI Decision No. 235/04), to support implementation of the programmes being conducted to regularize titles to publicly held land at the provincial and national levels and to contribute to implementation of the plan for gathering information on the status of land titles and arranging for the purchase of land in order to fulfil the provision in the Constitution calling for the transfer of land that is adequate and sufficient for human development.

131. Decree No. 1122/2007, published in the *Boletín Oficial* of 27 August 2007, contains the implementing regulations for Act No. 26160. Article 3 of that decree states that the National Institute of Indigenous Affairs shall approve such programmes as may be necessary to successfully conduct the necessary technical and legal title surveys of land occupied by the country's indigenous communities as a basis for ensuring recognition, in accordance with the Constitution, of communal possession and ownership. It also stipulates that these programmes should uphold each indigenous group's world view and cultural patterns and should ensure that the Council on Indigenous Participation is involved in the design and execution of such programmes in order to protect indigenous peoples' constitutional right to take part in managing matters that affect them. INAI is to undertake the technical and legal title survey of lands occupied by communities registered with RENACI and/or the corresponding provincial agencies. INAI, in consultation with the Council on Indigenous Participation, is also to make sure that pre-existing communities covered by article 1 that continue to maintain traditional, public possession of land are to be included in these surveys. These tasks are now being carried out.

132. Information on a number of judicial rulings and decisions on the subject is provided in annex II.

4. Council on Indigenous Participation

133. INAI is now in the process of creating and consolidating effective mechanisms for the participation of indigenous peoples in the development, implementation and monitoring of public policies that affect them and in related decision-making processes.

134. Such participation is to be ensured through the establishment of the Council on Indigenous Participation, whose creation is provided for in INAI Decision No. 152 of 6 August 2004 and Amendment No. 301/04, together with, at a subsequent stage, the Coordinating Council, whose establishment is provided for in Act No. 23302 (art. 5).

135. The Council on Indigenous Participation determines the methods to be used to appoint the representatives of indigenous groups that will sit on the Coordinating Council. This mechanism for indigenous participation in public policymaking is designed to fulfil the mandate contained in article 75, paragraph 17, of the Constitution and Act No. 24071, by which International Labour Organization (ILO) Convention No. 169 was ratified.

136. The establishment of the Council on Indigenous Participation within the framework of INAI, which provides a forum for the discussion of all issues of concern to indigenous groups, marked the start-up of participatory consultations between the Argentine Government and indigenous peoples.

137. In the course 2005, assemblies of the different indigenous peoples were held in each of the country's 37 provinces in order to elect representatives to the Council. The authorities of the various communities took part in these assemblies in a manner which was in keeping with the organizational and cultural mores of each group.

138. Following these elections, regional meetings were held in order to launch a participatory process focusing on the identification of common problems and solutions.

139. These meetings marked the beginning of a new stage of activity in which indigenous communities and peoples are taking on a leading role. The participation of indigenous representatives in the Council ensures that public policy actions relevant to indigenous groups address the genuine demands and urgent needs of these communities and that mechanisms for consultation and for preserving and protecting traditional knowledge will be set up.

B. Protection of migrants

140. In Argentina's experience, restrictive immigration measures are counterproductive. By erecting legal barriers, such measures only contribute to the existence of irregular situations and the loss of human life; they also make human traffickers' activities more profitable.

141. In a variety of forums Argentina has voiced the belief that respect for migrants' human rights is of vital importance, regardless of their migratory status, and has spoken of the need for Governments to take effective steps to facilitate their integration into their host country and to do away with discrimination, xenophobia and racism in all its forms.

142. In line with this position, Argentina ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in February 2007.

143. The Argentine Republic is of the view that legality is the foundation of any democratic society and is essential in order for persons from other countries to become

fully integrated into the host society. Consequently, it has designed mechanisms for identifying migrants and putting their documents in order, thus making it easy for them to regularize their status.

144. Argentina understands that, in designing policies to counter irregular migration, special attention should be devoted to identifying people who have left their countries because they require international protection and need to be provided with access to the territory and to effective asylum procedures in keeping with international humanitarian and refugee law.

145. The position held by the current Administration places it at the forefront of the move to protect migrants' rights. Its stance is based on a recognition of the need to respond to the twenty-first century's complex web of migratory flows by effecting a paradigm shift in the approach taken to international migration. The transition must be made from a focus on security and border control based entirely on the concept of the nation-State to a comprehensive human rights perspective in which migrants and their families are the core concern of public migration policy.

146. As explained during the oral presentation of Argentina's report in August 2004, this new paradigm is embedded in the country's policies on migration and is thus reflected in the new National Migration Act (Act No. 25871), which entered into force in January 2004, and in its migration regularization programmes (see the text of Act No. 25871 in annex I).

147. Act No. 25871 sets forth the following fundamental principles:

(a) Respect for human rights and international commitments regarding such rights. "The objectives of this law are as follows: (a) ... fulfil the international commitments made by the Republic concerning the human rights, integration and mobility of migrants ... (f) Ensure that non-discriminatory procedures and criteria are applied with regard to the rights and guarantees established by the Constitution, international treaties, existing bilateral agreements and domestic laws in the case of any person requesting admittance to the Argentine Republic ... (g) Promote and disseminate information on migrants' obligations, rights and guarantees in accordance with the Constitution, international commitments and domestic laws while upholding Argentina's humanitarian tradition of openness to migrants and their families ..." (art. 3);

(b) Right to migration. "The right to migration is a fundamental and inalienable human right which is guaranteed by the Argentine Republic on the basis of the principles of equality and universality." (art. 4);

(c) Equal treatment. "The State shall ensure conditions of effective equality of treatment so that foreigners may enjoy their rights and fulfil their obligations ..." (art. 5); "The State, in all areas falling within its jurisdiction, shall guarantee migrants and their families equal access under the same conditions with regard to protection and rights as those enjoyed by nationals, particularly with respect to social services, public goods, health, education, justice, employment and social security" (art. 6); "For the purposes of this Act, any act or omission motivated by such factors as ethnicity, religion, nationality, ideology, political opinion, trade union affiliation, gender, economic position or physical traits which arbitrarily prevents, impedes or restricts the full exercise of rights and guarantees on an equal footing will be considered to be discriminatory." (art. 13);

(d) Right to education. "In no case shall a foreigner's irregular migrant status prevent him or her from being accepted as a student in a public or private national, provincial or municipal educational establishment at the primary, secondary, tertiary or university level. The authorities of educational establishments shall provide guidance and advice concerning the procedures for resolving irregularities in migrant status." (art. 7);

(e) Right to health. “The right to health, social assistance and health care shall not be restricted or denied to any foreigner, regardless of his or her migrant status ...” (art. 8);

(f) Right to information. “Migrants and their families are entitled to receive information from the State regarding: (a) their rights and duties under existing legislation; (b) the requirements pertaining to their entry, presence and departure.” (art. 9);

(g) Promotion of integration. “The State, in all areas falling within its jurisdiction, whether at the national, provincial or municipal level, shall encourage initiatives aimed at integrating foreigners into their community of residence ...” (art. 14);

(h) Ready access is to be provided to arrangements for regularizing the migration status of nationals of a State party or associate member of MERCOSUR as a basis for eligibility for legal residency (art. 23, para. l);

(i) Deportation procedures must take the form of judicial proceedings (title V, chap. I);

(j) The detainment of foreigners in connection with deportation procedures may be ordered only by the courts (title V, chap. II);

(k) Punishment of illegal trafficking in persons. Endangerment of a migrant’s life, health or integrity and trafficking in the case of a minor constitute aggravating circumstances (chap. VI). This marks the first time that trafficking in migrants has been specifically defined as an offence under Argentina’s migration laws. The law provides for a term of imprisonment of from 1 to 6 years, and this may be extended to up to 20 years in the event of aggravating circumstances.

148. The regulations to be applied in implementing this law are now being developed. The present law differs substantially from the law it replaces, which was in effect for over 20 years. This makes the task of formulating its accompanying regulations all the more difficult, since new types of situations must be addressed. All the relevant sectors of government and NGOs working in the field are being consulted. It has to be recognized that the uneasy economic situation and high unemployment currently being experienced by the Argentine Republic are not an ideal setting for the development of implementing regulations or for the application of a law of this sort. The design of these regulations is premised on the principle that people are entitled to equal rights by virtue of the simple fact that they are human beings, rather than by reason of their nationality. Care is also being taken to avoid lapsing into reverse discrimination, i.e., to refrain from introducing any sort of unequal treatment which would be prejudicial to Argentine nationals.

149. The factors outlined in the preceding paragraph notwithstanding, and until the new regulations are ratified, the Ministry of the Interior and the National Directorate of Migration have adopted a series of measures to ensure that the spirit of Act No. 25871 is duly upheld.

150. These measures include the following:

(a) Suspension of expulsions or orders to leave the country for nationals of neighbouring countries (National Directorate of Migration (DNM) provision No. 2074/04, issued on 28 January 2004). The aim of this provision is to safeguard the rights of citizens of neighbouring countries who may be able to regularize their situation under the new law once its enabling regulations have been adopted. This provision does not apply to expulsions ordered because of the existence of a criminal record;

(b) Abrogation of any order of preventive custody or fines issued by the National Directorate of Migration under Act No. 22439, which has since been repealed (DNM provision No. 17627, issued on 23 April 2004). As noted above, under Act No. 22439, the

National Directorate of Migration was authorized to detain foreigners subject to deportation orders for the sole purpose of carrying out their expulsion. Under the new migration law, only the courts have the power to remand a foreigner in custody. For this reason, the National Directorate of Migration, which, under Act No. 25871, no longer has the authority to remand persons in custody or levy fines, has rescinded all such orders issued under the preceding law that had not yet been executed;

(c) Reduction of the fees payable by foreigners applying to the Argentine Consulate for residency permits (DNM provision No. 21085 of 17 June 2004).

1. Migration policy within MERCOSUR

151. Argentina places great importance on MERCOSUR and its member States, which include Brazil, Paraguay, Uruguay and the Bolivarian Republic of Venezuela, as well as Argentina itself, as full members and Chile, Bolivia, Ecuador and Colombia as associate members. In 1996, the Meeting of Ministers of the Interior of MERCOSUR and its Associate Members was set up to work towards the adoption of agreed measures in areas falling within their purview. To this end, two major themes were identified: migration and security. In both respects, as a result of the joint work of the countries making up this bloc, progress has been made towards the development of policies designed to uphold human rights and promote the well-being of the population.

152. Another particularly significant event was the signing of the MERCOSUR and Associate Members Residence Agreement, which is now being incorporated into the domestic laws of these countries. Under this agreement, anyone born in a signatory country may obtain legal residence in another signatory country simply by virtue of the applicant's nationality and the absence of a criminal record.

153. Argentina, without waiting for this instrument to enter into force within the bloc and without insisting on reciprocity, has launched its own national programme (the "*Patria Grande*" programme) to regularize the status of migrants.

154. Under the *Patria Grande* programme, 609,839 migrants were granted legal residency between 17 April 2006 and 17 October 2008 (see programme statistics in annex III).

155. A central feature of the programme is the direct involvement of the provinces, municipalities and social organizations in the receipt of applications, which are then forwarded to the National Directorate of Migration. Currently, 98 data collection centres that are directly in contact with migrants are working with the Government in this connection.

156. In order to achieve this, the Government called upon the Church, trade unions, migrants associations and Argentine NGOs to work with it, and these organizations responded positively. Whereas they had previously focused on airing complaints or championing migrants' rights, they have now become actively involved as key stakeholders in the process.

157. The National Directorate of Migration succeeded in processing the 184,351 persons who have been granted legal residency status under the *Patria Grande* programme in 60 days. Without the involvement of the above-mentioned institutions, it would have required approximately 667 days to do so.

158. The *Patria Grande* programme is not an amnesty scheme; nor it is time-bound. It is designed as a State policy and will in future be applicable to nationals of MERCOSUR member countries already present in Argentina as well as those who enter in the future. It even offers people the possibility of applying for residency in Argentine consulates in the

applicant's country of origin so that people may obtain residency before entering the country.

159. To obtain a permit, applicants need only show that they are nationals of a member or associate member country of MERCOSUR and that they do not have a criminal record. They then receive a temporary two-year residence permit; at the end of that period they may obtain a permanent residency visa.

160. Implementation of the *Patria Grande* programme in the Argentine Republic earned commendations and support from the other members and associate members of MERCOSUR. A declaration to that effect was signed at the Meeting of Ministers of the Interior, who undertook to adopt similar procedures.

C. Protection of refugees

161. Pursuant to the comments made by the Committee in paragraph 13 of its concluding observations, it is important to point out that, as Argentina is a State party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the agency responsible for refugee status determination in Argentina has supported a range of measures designed to improve the arrangements for establishing eligibility for refugee status and to speed up the assessment of applications.

162. This has helped to substantially reduce the number of pending applications, compared to the situation in previous years. Significant progress has been made in protecting the rights of refugees as well. In fact, Argentina's standards regarding the treatment of refugees and migrants, even those without documents, are among the highest in the world.

163. These efforts have been recognized by the Office of the United Nations High Commissioner for Refugees (UNHCR), which has stated that Argentina maintains the highest standards of technical analysis in the region and that it has fully embraced the most up-to-date legal interpretations regarding various controversial matters that pose problems in terms of application. Thus, Argentina has recognized as refugees "persons who feel that they have been discriminated against on grounds of religion, conscientious objection, gender or sexual orientation". In these kinds of cases, Argentina has interpreted refugee status in the most progressive terms, approaching the question broadly and from the standpoint of the full implementation of human rights rather than as a question of national security. Argentina routinely grants refugee status to persons subject to persecution by non-State agents.

164. In this connection, the UNHCR regional office responsible for southern Latin America has noted with satisfaction the progress achieved by Argentina with regard to the protection of refugees, as well as its efforts to strengthen the secretariat of the body responsible for determining refugee status by providing it with adequate resources.

165. UNHCR has also emphasized the importance of the official statistics prepared by the secretariat, together with the adoption of innovative protection mechanisms and measures to strengthen the procedure for determining refugee status.

166. The work of UNHCR in the Argentine Republic with regard to the determination of refugee status centres on overseeing and advising the authorities in the area of technical analysis. The determination of eligibility for refugee status is based on UNHCR recommendations, which are being applied in Argentina as a matter of course.

167. Each application for refugee status is considered and processed on an individual basis (as distinct from most countries, where decisions are grouped and/or communicated verbally). Such decisions can also be submitted for review by the Ministry of the Interior,

following consultations with the Office of the Secretary for Human Rights of the Ministry of Justice, Security and Human Rights.

168. A number of the region's objectives in the area of protection have thus already been met in Argentina. This, however, set the stage for further challenges, the most significant among which was the development of a law on refugees at the earliest opportunity that would systematize the existing provisions and open the way to international cooperation in this field. Another was to bring the main state departments concerned with the integration of refugees at the local level into the institutional structure, since they had not hitherto been represented on the Refugees Eligibility Committee.

169. In November 2006, Congress adopted the Refugee Recognition and Protection Act (No. 26165).

170. In general terms, the new law sets out the basic principles concerning the protection of refugees and applicants for refugee status enshrined in international instruments: non-refoulement, including a prohibition on turning people back at the border; non-discrimination; non-penalization of illegal entry; confidentiality; non-discrimination and the integrity of the family. It also sets up the new National Commission for Refugees (CONARE) to replace the Refugees Eligibility Committee (CEPARE), which had been made up of immigration and foreign affairs officials. Under the new act, the Commission is to include representatives of the Ministry of Justice, the National Institute against Discrimination, Xenophobia and Racism (INADI) and the Ministry of Social Development. The inclusion of this last Ministry opens the way for assisting refugees through their inclusion in national, provincial and municipal programmes, with particular reference to the most vulnerable groups, such as unaccompanied minors, women heads of household, the elderly and people in poor health. This represents a new development, since the functions of CEPARE were confined to the determination of refugee status.

171. The new law also clarifies the procedure for appealing at second instance against a negative decision by CONARE. It assigns the authority to rule on such appeals to the Minister of the Interior, following consultations with the Office of the Secretary for Human Rights in the Ministry of Justice.

172. The act makes provision for a prima facie determination of refugee status in the event of a mass influx of refugees. Under this provision a person may be recognized as a refugee by virtue of his or her membership in a specified group of such persons.

173. This act also provides for the possibility that persons who have been granted refugee status in another country, but who are unable to remain in that country because their fundamental rights and freedoms would be at risk, may apply to any Argentine diplomatic mission to relocate to Argentina. That mission will be responsible for receiving such applications and drawing up the relevant file, which is to be promptly transmitted to the Executive Secretariat of the Commission for processing.

D. Protection against human trafficking

174. With regard to the concern expressed by the Committee in paragraph 14 of its concluding observations with regard to the trafficking of persons, the following information is provided.

175. In 2000 Argentina ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

176. On 30 April 2008, Argentina promulgated Act No. 26364 on the prevention and punishment of trafficking in persons and aid for victims. The act defines trafficking in

persons — the third-largest form of illegal trade in financial terms after the illicit weapons and drug trades — as a federal crime punishable by a sentence of from 3 to 15 years' imprisonment. It distinguishes between adult victims and those under 18 years of age. In the case of adults, there must be evidence of coercion in order for it to constitute an offence, and the penalty prescribed is from 3 to 6 years' imprisonment; this may be increased to up to 10 years if the guilty party is a spouse or close relative. In the case of persons under 18, the penalty ranges between 4 and 10 years' imprisonment, while in cases of persons under 13, it may be from 6 to 15 years' imprisonment without parole.

177. Moreover, the act establishes that victims have the right to:

(a) Be informed of their rights in a language they understand and in wording suited to their age and level of maturity;

(b) Appropriate housing, care, sufficient food and adequate facilities to maintain personal hygiene;

(c) Psychological, medical and legal assistance free of charge;

(d) Benefit from special conditions in terms of protection and care when bearing witness;

(e) Protection from all possible reprisals against them or their families and to placement in the national witness protection programme as provided for in Act No. 25764;

(f) The adoption of all means necessary to ensure their physical and psychological integrity;

(g) Be informed of the status of the proceedings, the measures adopted and any developments in the process;

(h) Be heard at all stages of the proceedings;

(i) Protection of their identity and privacy;

(j) Stay in the country, in accordance with the legislation in force, and to be given documents or other certification establishing their legal status;

(k) Assistance in returning to their previous homes;

(l) Free and voluntary access to assistance.

178. In the case of children and adolescents, in addition to the rights mentioned above, there is the guarantee that the proceedings will take into consideration their special needs as individuals still in the midst of their personal development process. They are under no circumstances to be subjected to confrontations. The measures used for the protection of their rights are not to restrict their rights or guarantees, nor deprive them of their liberty. Efforts are to be made to return them to their immediate or extended family or community.

179. The new act stipulates that the national budget is to include the allocations required for its enforcement.

180. This law effectively institutes the National Programme for the Prevention and Eradication of Trafficking in Persons and for Assistance to its Victims, which was created by Decree No. 1281/07 of 2 October 2007. This programme, which is to be overseen by the Ministry of the Interior, has been designed to coordinate the State's efforts to achieve greater effectiveness in preventing trafficking in persons and in assisting victims. The programme will also be responsible for all activities aimed at preventing and eradicating the traffic in persons.

181. Such activities include: building capacity for detaining and prosecuting traffickers and dismantling trafficking networks; ensuring respect for and exercise of victims' rights;

forestalling and preventing revictimization; promoting research on the problem and greater awareness of it; monitoring compliance with the relevant legal provisions; creating a database on human trafficking; and making available a free telephone hotline.

1. Awareness-raising and training activities

182. INADI has participated in training activities held nationwide in which material produced by the International Organization for Migration (IOM) and INADI itself (posters, films, and radio and television public service announcements) were used and distributed. Training activities have been conducted with the Office of the Secretary for Human Rights of the Ministry of Justice, the National Office for Children, Young Persons and the Family, and the municipal government of Comodoro Rivadavia, among others.

183. The Office of the Secretary for Human Rights of the Ministry of Justice is organizing systematic awareness-raising and training activities for civil servants at the national and provincial levels, in particular for members of the police force. Part of this work is carried out in liaison with the National Police Training Programme being run by the Office of the Secretary for Internal Security the Ministry of the Interior.

184. As part of this effort, a seminar focused on human trafficking and smuggling was held for over 70 officials in the nation's security forces (provincial police, federal police, the coast guard and the national guard) from Rio Negro, Chubut and La Pampa Provinces. This seminar took place at the headquarters of the Ministry of the Interior in Chubut Province, in the city of Rawson. It was repeated in the Metropolitan Auditorium of the National Institute of Public Administration, with the participation of 60 police officers from Buenos Aires Province.

185. With the support of the Spanish Agency for International Cooperation, an awareness-raising and training programme on the trafficking of persons and human rights was held in October 2007 with the assistance of two Spanish experts: a lieutenant in the Guardia Civil and a victim assistance specialist. The programme was conducted in the provinces of Santiago del Estero and Chubut and in the City of Buenos Aires for civil servants, judicial system staff and NGOs. It was attended in all by some 300 staff members from different government departments and NGOs.

186. Efforts in the area of primary prevention have involved the delivery of training to social organizations, in particular women's organizations, that are in close contact with local communities. These organizations are then better equipped to warn people about the forms of recruitment used by traffickers and to pinpoint deceptive advertisements and propaganda.

187. In 2006, IOM initiated a programme (FOINTRA I) to promote awareness about the issue of trafficking in persons in the provinces of Chubut, Jujuy, Misiones and Buenos Aires. It plans to launch the FOINTRA II programme in the provinces of Río Negro, Tucumán, Córdoba and Entre Ríos.

188. The issue of human trafficking has been included on the MERCOSUR agenda through the working groups responsible for drafting proposals at the regional level. The Niña Sur initiative developed at the Meeting of High-Level Human Rights Authorities and Foreign Ministries of MERCOSUR warrants special mention in this connection

E. Protection of persons with disabilities

189. According to the 2006 INDEC survey on disabilities, 7.1 per cent of the population — close to 2.7 million persons — has some form of disability. However, the survey was conducted only in towns of more than 5,000 inhabitants.

190. In the case of persons with special needs, the right to freedom of movement is limited by the architectural barriers that exist in public buildings and spaces in cities around the country and by the need for improvements in public transport services. This situation brings to the fore the significant gap to be found between the existing laws and their enforcement.

191. Act No. 24314 of 1994 — to which the majority of provinces have adhered — and Decree No. 914/97 establish the guidelines for removing architectural and transport barriers. Accessibility to all public transport is also made mandatory under this law. A 1997 decree provides guidelines for the gradual replacement of buses that have no ramps with ones equipped with these devices. Had this decree been complied with, half of Buenos Aires' buses would have ramps today. However, owing to successive postponements by the Transport Secretariat, not even a quarter have been replaced. According to the Office of the Ombudsman, the compliance rate is only 5 per cent on railways. The National Commission for Transport Regulation (CNRT) reports that all the buses in the national system will not be fully accessible until 2012. No data have been provided by the Transport Secretariats.

192. Only 14.6 per cent of those entitled to disability certificates have received them. A mere five provinces have adhered to Act No. 25504 (passed on 14 November 2001 and promulgated on 12 December 2001), which provides for a comprehensive protection system for the disabled. Consequently, persons with disabilities from the remaining 18 provinces must travel to the capital to appear before the medical board of the National Rehabilitation Service, which gives appointments for up to six months in the future. Act No. 25635 (passed on 1 August 2002 and promulgated on 26 August 2002) provides for free passage on overland transport for the holders of disability certificates and for the person accompanying them, where necessary. Decree No. 118/06, issued by the Ministry of Federal Planning, Public Investments and Services, sets a quota of one seat on each long-haul coach, which runs counter to the law. While instances of non-compliance are constantly being reported, no penalties are imposed.

193. According to the NGO *Acceso Ya* ("access now"), discrimination in education exists in approximately 73 per cent of public schools and 95 per cent of private schools in Buenos Aires. These schools are inaccessible to children with disabilities because they are not equipped with appropriate washrooms, classrooms and ramps. This is an infringement of the free exercise of the right to education for a large number of children with disabilities. On 27 December 2006, *Acceso Ya* initiated *amparo* proceedings against the Ministry of Education of the Government of the City of Buenos Aires. The aim of the *amparo* proceedings is to demand the implementation of the necessary measures to ensure accessibility in the city's schools.

194. In 2007, INADI, in collaboration with the United Nations Development Programme (UNDP), drafted a baseline assessment and proposals regarding accessibility for persons with disabilities to transport, public spaces, schools and hospitals. The work consisted of two phases. In the assessment phase, a study was commissioned in order to clarify a number of accessibility issues and define lines of research for this phase. In the second phase, a set of proposals was presented after having arrived at a number of conclusions based on the preceding analysis.

195. The aim of the programme is to conduct a survey of public spaces, public health and education facilities, means of transport and transit hubs. To this end, four cities were chosen for their economic importance and population size: Buenos Aires, Córdoba, Rosario and Mar del Plata.

196. Promotion of Protected Employment (Ministry of Labour, Employment and Social Security). To promote the full social integration and personal development of persons with disabilities, the Social Security Secretariat is analysing the federal protected employment

scheme for persons with disabilities and has prepared a section on the special social security scheme designed to provide insurance coverage for old age, disability, death, illness, dependants and occupational risk for disabled workers covered by the proposed legislation.

197. The Government has continued to strengthen the operations of the Unit for Persons with Disabilities and Vulnerable Groups within the Ministry of Labour, Employment and Social Security. Important measures taken in this regard include:

(a) Implementation of specific programmes for community employment, special training, economic assistance for companies that hire disabled workers, workplace adaptation, and economic support for microentrepreneurs and the self-employed (the latter two are funded by the Current Account Act, which is administered by CONADIS);

(b) Encouraging workers with disabilities or from vulnerable groups to take a more active role in defending their rights by giving them preferential access to the general programme for heads of household, public- and private-sector vocational training, basic school-leaving qualification courses, and regional- and sector-specific programmes;

(c) Implementation of Selective Employment Areas (AES) in the provinces of Tucumán, San Juan and Tierra del Fuego and in the city of Rosario. The aim is to set up AES in the 180 municipal employment services that receive support from the Ministry of Labours;

(d) Framing of a bill to support the creation of a federal system for protected employment;

(e) Joint execution of the AGORA project for the integration of the blind and visually impaired, which is funded by the ONCE Foundation for Solidarity with the Blind in Latin America (FOAL), the Argentine Federation of Institutions for the Blind and Visually Impaired (FAICA) and the Ministry of Labour;

(f) Support for the Buenos Aires branch of an association of socially-committed companies promoting employment opportunities for persons with disabilities (*Club de Empresas Comprometidas con la Discapacidad*) which has been formed by approximately 50 firms. Similar clubs are being set up in the provinces in collaboration with AES;

(g) Through the efforts of the Buenos Aires Employment Office, 420 disabled workers were placed in various companies on continuing contracts;

(h) To date, close to 40,000 persons with disabilities are benefiting from programmes and activities run by the Ministry. In addition, more than 10,000 people belonging to groups whose rights have been violated are participating in these initiatives.

F. Protection of children and adolescents

198. In September 2005, Act No. 26061 on the Comprehensive Protection of the Rights of Children and Adolescents was passed. The aim of this law is to guarantee the full, effective and continuing exercise and enjoyment of rights recognized under the national legal system and the international treaties to which Argentina is a party.

199. Article 2 of the Act provides that the Convention on the Rights of the Child must be observed in all acts, decisions or measures of an administrative, judicial or other nature applying to persons up to 18 years of age.

200. In Argentine law, the principle of the best interests of the child is an overarching tenet, since it is enshrined in an international instrument that has constitutional rank.

201. The firm commitment of the national courts to provide special protection for children's best interests is reflected in a range of case law to that effect.

202. The Act on the Comprehensive Protection of the Rights of Children and Adolescents provided for the establishment of the National Office for Children, Young Persons and the Family as part of the executive branch. This office specializes in the rights of children and adolescents, and is to include representatives from various ministries and civil society organizations. By Decree No. 416/2006, the Office was placed under the Ministry of Social Development.

203. Finally, it should be noted that the Ombudsman for the Rights of Children and Adolescents submits annual reports to Congress and reports personally to meetings of the standing committees specializing in this area in each chamber of Congress on a rotating quarterly basis and at any other time that one of these committees so requests.

G. Article 5 (d): other civil rights

1. The right to marry

204. Act No. 1004, passed in December 2002 by the legislature of the City of Buenos Aires, defines a civil union as one "formed freely by two persons independent of their sex or sexual orientation".

205. At present, the national courts are debating whether the Constitution and international human rights treaties recognize the right of all persons to marry. A number of couples have challenged the constitutionality of articles 172 and 188 of the Civil Code, as well as all other legislation that arbitrarily and discriminatorily prohibits or obstructs same-sex marriages.

206. As indicated previously, National Social Security Administration resolution No. 671/2008 of 19 August 2008 declares that surviving same-sex partners are entitled to pension benefits as survivors of deceased retirees, recipients of disability payments or active contributors in the public or funded social security systems.

2. The right to gender identity

207. Despite the absence of a law on gender identity guaranteeing transgender persons the right to their identity, that is to say, legal recognition of their name and rectification of their identity documents, this right has nonetheless been recognized in Argentina both in doctrine and in case law.

208. By way of example, it may be noted that, on 21 March 2007, in La Plata, Buenos Aires Province, the Supreme Court issued its judgement in case C. 86.197, *C.H.C. change of name*, wherein it admitted the appeal lodged by a transsexual and ordered that the entry in which that person's sex was noted in the birth certificate issued by the Civil Registry of the City of Buenos Aires should be changed from male to female. The court also ordered that the name be changed, that a new identity document bearing these corrections be issued, and that the data concerned should be amended in all public and private documents.

H. Article 5 (e): economic, social and cultural rights

209. Further to the concern expressed by the Committee in paragraph 20 of its concluding observations regarding indigenous peoples' enjoyment of economic, social and cultural rights, the following information is provided.

210. The Directorate for the Development of Indigenous Communities is primarily responsible for designing and implementing, alone or together with other national, regional or municipal bodies, short-, medium- and long-term programmes for the comprehensive development of indigenous communities. These programmes include action plans in the areas of health; education; housing; land use and development; the promotion of agricultural, forestry, mining, industrial and artisanal production and marketing activities, particularly in the case of indigenous products, in national and international markets; and social security and assistance.

211. The different programmes and projects have helped to improve the quality of life of these communities through a wide range of affirmative action, initiatives aimed at promoting and strengthening communities and organizations, production projects and other sources of employment and income, community infrastructure and rural communications systems.

212. According to the strategy defined by INAI, the three most important questions to be asked about any initiative are:

(a) Whether it will effectively and efficiently influence the quality of life of poor indigenous communities located in areas subject to significant levels of out-migration;

(b) Whether it enables indigenous communities or the institutions which support them to build their capacity to incorporate a strategic vision and to improve programme and resource management and administration;

(c) Whether it offers innovative approaches for overcoming existing barriers to the development by local businesses of methods of capitalization and management and of means of improving social relations and introducing new technology that are suited to the current needs and culture of each community.

213. In order to assess the ability of candidate agencies to carry out a project, the profiles of the relevant communities (including their objectives, history, integration and accumulated experience), have been analysed. Even more importantly, approaches for institution-building initiatives have been systemized in order to help indigenous communities to improve their chances of securing resources under other social programmes as well.

214. Efforts have also been made to improve the proposed projects' degree of consistency in terms of the alignment of their main goals, planned actions, available resources and desired results.

215. The work undertaken in these communities in the last few years has helped them to become organized and see for themselves the benefits of community action.

216. Community development programmes are designed to provide technical and financial support for sustainable development projects while ensuring that indigenous peoples are involved at every step along the way. The effective participation of community members in the project is encouraged with a view to fostering responsibility and self-management and to laying down solid foundations for group and community action.

217. Communities are involved, on a comprehensive, concerted and participatory basis, in the planning stages of projects to ensure their sustainability and make certain that their benefits will continue to be felt once the support and financing has come to an end.

218. Social projects target the poorest communities and focus on improving their socio-economic and cultural conditions so that community members can stay on their lands and territories.

219. One of the aims of the work being done in the area of culture and crafts is to finance projects to support the recovery and appreciation of indigenous cultures in both their historical and contemporary forms with a view to preserving their heritage, highlighting their values, safeguarding their customs and community-based way of life, and respecting and ensuring respect for their world view. Efforts in this connection are also devoted to the preservation of their indigenous languages, the protection of their inventions or creations and the preservation of their territory and habitat, all of which can be said to form part of their culture.

220. The aim is thus to safeguard cultural elements that represent a significant economic resource, such as handicrafts, which hold out the potential for an entire array of distribution and marketing channels. Handicrafts should be seen as a cultural process, both during the learning phase and all stages of production, as well as when they are sold at markets, fairs and in public places. The promotion of workshops, exhibitions and cultural events can help re-establish handicrafts as a significant form of indigenous artistic expression.

221. Another objective is to protect and promote indigenous forms of musical expression and to support their use by recovering indigenous dances and making broadcast media, such as bilingual and intercultural community and school radio stations, available.

1. Intercultural bilingual education

222. National Education Act No. 26206, chapter XI, describes intercultural bilingual education as "... the educational modality which, at the preschool, primary and secondary levels, guarantees the constitutional right of indigenous peoples, in accordance with article 75, paragraph 17, of the Constitution, to receive an education that helps to preserve and reinforce their cultural norms, language, world view and ethnic identity, to play an active role in a multicultural world and to improve their quality of life".

223. To encourage the development of intercultural bilingual education, the aforementioned law also states that "… the State shall be responsible for: (a) creating permanent mechanisms for participation by representatives of indigenous peoples in the bodies responsible for defining and evaluating intercultural bilingual education strategies; (b) guaranteeing specific, initial and ongoing teacher training at all of the system's different levels; (c) furthering research on the sociocultural and linguistic reality of indigenous peoples as a basis for the design of curricula, relevant educational materials and educational management tools; (d) promoting the creation of institutional mechanisms for the participation of indigenous peoples in the planning and management of teaching and learning methods; (e) fostering the establishment of educational models and practices that are indigenous peoples' values, knowledge, languages and other social and cultural characteristics".

2. INAI programmes

Programme on Support for Intercultural Indigenous Education

224. This programme is aimed at indigenous students at the intermediate level of the basic education cycle, at the multitrack level and in higher education throughout the country.

225. Generally speaking, indigenous students tend not to complete the compulsory education cycle, and few reach the highest levels of the educational pyramid, that is to say, the multitrack and university levels. They also tend to face discrimination, which reinforces problems of low social and educational self-esteem. This programme therefore seeks to strengthen and establish educational strategies that foster non-hierarchical diversity based on reciprocity.

226. In educational terms, this entails helping participants to regain a positive perception of their learning abilities and mobilizing the necessary resources they need to develop those abilities further by respecting rather than denying their economic, cultural, ethnic and gender-related frames of reference.

227. Scholarships and mentoring for indigenous adolescents and young people are specifically aimed at improving their material and symbolic position within the educational system; the chief objectives are, on the one hand, to reverse certain elements of the structural trends that cause students to fail and abandon their studies and, on the other hand, to do away with their stigmatization at school and subjective phenomena leading to self-exclusion.

228. Through a system of scholarships and mentoring for indigenous secondary pupils, whether they hold a scholarship or not, and in coordination with the indigenous communities and peoples of the country, the programme's main goals are to:

(a) Offer the communities the possibility to develop fully on the basis of a bilingual intercultural education;

(b) Ensure the genuine participation of indigenous communities in decisions concerning their education;

(c) Set up intercultural training facilities for the various educational bodies;

(d) Encourage the implementation of a bilingual intercultural education system at the national level that will raise awareness about the value of the culture, native language and world vision of these communities and foster their integration into the formal education system and its curricula;

(e) Help to strengthen and restore all aspects of ancestral cultures.

229. The specific objective of this programme is to provide intercultural mentoring to help ensure that indigenous pupils complete their secondary education. The mentors act as a link between the communities and the schools; they may be indigenous or non-indigenous and must be chosen by the community.

230. The Programme to Support Aboriginal Intercultural Education was set up in 1997 and is part of the Universal Programme – National Scholarships Plan of the Ministry of Education, as it includes a specific allocation for indigenous students within the Universal Programme.

231. As part of this programme, established by an agreement signed between the Ministry of Social Development and the Ministry of Education, Science and Technology, 5,000 scholarships were awarded in 2003. In 2004, because the demand for scholarships was greater than it had been the previous year, 6,000 scholarships were awarded. In 2005, the number of scholarships rose to 8,000 and in 2006 to 11,000.

232. INAI also awards scholarships to indigenous students at the tertiary and university levels. In the latter case, scholarships are awarded under a subprogramme of the National University Scholarships Programme.

233. The Intercultural Educational Community (CEI) is the basic tool that has made it possible for the programme to achieve these results. This body of representatives of the various sectors involved — parents, mentors, teachers, directors, representatives of community organizations — takes responsibility for managing all educational, economic and social aspects of each project. It is also responsible for the final evaluation of each project, which incorporates new elements to be taken into account in the field of intercultural education and the management of education. The mentors — as representatives of aboriginal knowledge who have been chosen by the communities

themselves — furthermore provide reassurance for the parents as to the validity of the evaluations of these students.

234. The intermediate-level scholarships are for one school-calendar year and the higher-level scholarships cover one academic-calendar year.

235. Intermediate-level students can apply for such scholarships by filling in a form. These forms are distributed in each community by representatives of the Council on Indigenous Participation (CPI), who are elected by community assemblies from among the community leaders or representatives. One such representative is selected for each indigenous group in each province. The communities establish the eligibility criteria.

236. In the first semester of 2007, a total of 8,000 new scholarships were awarded. This was in addition to the 7,000 scholarships awarded to ensure that students already receiving such assistance were able to continue their studies. In total, 15,000 scholarships were awarded throughout the country.

Training programme for intercultural mentors

237. The function of intercultural mentors is to assist indigenous students with their studies and help strengthen their cultural identity. The mentor serves as a link among all the stakeholders involved in the intercultural educational community.

238. Intercultural mentors are chosen by their community and act as a link between the communities and the schools. Mentors reinforce awareness of the need for teachers to respect and be responsive to the diversity that exists in every classroom that includes students from different cultures. The main objective is to reach a consensus, with the help of workshops and community projects, on changes to be made to the curricula.

Objectives of the mentoring system

239. Each indigenous, intermediate-level student, regardless of whether or not he or she has a scholarship, will be assigned a mentor whose main role will be to:

(a) Provide learning support;

(b) Encourage and reinforce the student's cultural identity;

(c) Provide strategies for dealing with discrimination;

(d) Introduce intercultural programmes and activities in the school.

240. Indigenous students' educational experience is often affected by extremely adverse material conditions prior to and throughout their school career. This situation is compounded by the difficulties arising within institutions that have historically endorsed a homogeneous cultural heritage which is very remote from the different cultures of indigenous students.

241. The consequences of this cultural gap account for many of the academic failures that occur, and this is particularly true in the case of failures to recognize indigenous students' sociolinguistic knowledge. There is also evidence that racist and discriminatory mechanisms are at work that influence educational practices.

242. Monitoring: Mentors must submit a periodic report to INAI on educational improvements, difficulties encountered and support strategies that have been put in place.

243. Mentors also receive training periodically in order to make sure that they are up to date and able to carry out their role.

244. In addition, mentors participate in the training process outlined by INAI, along with higher-education scholarship holders and community leaders, within the framework of more global strategies to strengthen leadership amongst indigenous young people.

Literacy and reclaiming ancestral knowledge in indigenous communities

245. The Intercultural Bilingual Literacy Project (AIB) employs an innovative teaching/learning methodology. Indigenous communities choose literacy trainers from among their members to develop a work plan tailored to the particular needs of each community. This takes the form of meetings during which the ancestral knowledge of the elders is shared along with that particular indigenous group's and community's cultural customs, legends, tales, history and information on indigenous rights in order to boost the participants' self-esteem and encourage them to acquire basic literacy and numeracy skills and to learn how to do simple calculations to solve daily problems.

246. This is a pre-literacy activity designed to enable young people and adults who have not had the opportunity to learn to read and write in Spanish to learn the alphabet so that later, if they decide to, they can attend adult education classes. Discovering sounds, phonemes, words, stories and especially handicrafts, which are one of the most highly valued cultural expressions, in the course of an intercultural dialogue that has deep significance for indigenous communities gives rise to another form of literacy training that is geared to the particular educational methods of each culture.

247. These workshops will rely first of all on the community's involvement in sharing ideas at the beginning of the project. The community will meet again at the end of this literacy project to share their experiences and what they have learned and to discuss possible future implications or activities.

248. Bilingual indigenous literacy trainers, chosen by their communities, are responsible for teaching people to read and write. Each community that requests such a project must elect two literacy trainers from among its members. Each one is responsible for up to 10 students.

249. The target population is approximately 2,000 young people and adults per year.

Publication of materials produced by community members as part of various educational projects

250. Ancestral, historical and traditional knowledge within indigenous communities is still largely transmitted orally via stories, anecdotes, myths and legends drawn primarily from the collective wisdom of community elders. Through these education projects, other art forms, such as stone and other types of engravings, have also been identified. The communities' creativity is given expression in these stories and art forms, which reflect the lives of each community and people and which have now been collected and researched by students and/or community members. The written word is an essential tool for translating this cultural wealth into published material that can play an important role in disseminating the ancestral cultures that still exist in the country.

251. The publication of teaching materials specific to indigenous cultures is extremely useful in furthering the learning process within the education system, as it facilitates the urgently needed introduction of bilingual intercultural education.

252. Under this project, indigenous peoples themselves are to choose the materials, illustrate them and format them with the support and supervision of INAI.

VIII. Article 6 of the Convention

253. The remedies prescribed by Argentine law to provide protection against acts of discrimination have been described in previous sections and periodic reports submitted by the Argentine Republic, to which the reader is referred.

254. INADI has advisory and assistance centres for persons facing discrimination. Their task is to manage conflicts, receive and study the complaints of persons or groups that consider themselves to be victims of discriminatory practices and to advise and assist them. The procedure is as follows: once the allegation has been verified, a peaceful solution of the dispute is sought through legal advice, administrative management, mediation and free sponsorship.

255. On 1 November 2006, Congress adopted Act No. 26162, enacted on 24 November 2006, which recognizes the competence of the Committee on the Elimination of Racial Discrimination, in conformity with the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by Act No. 17722, to receive and examine communications from persons or groups of people under the jurisdiction of the Argentine Republic who claim to be victims of violations of their Convention rights by the State. This law designated the National Institute against Discrimination, Xenophobia and Racism (INADI) as the body authorized to receive and examine the aforementioned communications.

IX. Article 7 of the Convention

256. Measures adopted in the field of culture and information to combat the prejudices that lead to discrimination include the creation of the Discrimination in Radio and Television Observatory. The Observatory is a vehicle for inter-institutional cooperation composed of the Federal Broadcasting Committee (COMFER), INADI and the National Women's Council (CNM).

257. It was recently agreed that representatives of national universities' faculties of media sciences and journalism and/or equivalent study programmes should be invited to form part of an advisory council.

258. The Observatory was established pursuant to Proposal No. 208 of the National Plan against Discrimination and held its first meeting in 2005. Proposal No. 208 calls for steps to be taken "to exercise effective State supervision and control over forms and content of State, private and community media and the Internet that entail any type of discrimination, prejudice, ridicule, aggression and/or stigmatization aimed at different groups or sectors of the population that may be victims of discrimination". It also proposes creating an observatory on discrimination in the mass media operating under the authority of COMFER and establishing a specific unit within INADI.

259. On 2 November 2006, INADI and COMFER authorities signed a framework agreement enabling COMFER to benefit from the cooperation, advice and active participation of INADI in monitoring the content of radio and television programmes for compliance with the guidelines set out in the National Plan against Discrimination. A cooperation agreement to involve the National Women's Council and so benefit from the cooperation and support of this body in preventing and eradicating gender violence was signed on 7 March 2007.

260. Staffed by professionals drawn from a variety of social science disciplines, the Observatory takes a serious and responsible approach to its monitoring duties in an effort to uphold the principles and guarantees set forth in international treaties and in declarations on

principles of freedom of expression such as the Chapultepec Declaration, which has been adopted by the Inter-American Press Association (IAPA).

261. The Observatory investigates and undertakes critical analysis of television and radio content that could potentially convey discriminatory messages with a view to fostering social debate and looking at specific practices.

262. Since November 2006 the Observatory has been concentrating its analysis on cases reported by and telephone complaints received from members of civil society. This has led the Observatory to produce a series of reports on programmes and advertising that convey discriminatory messages and to enter into a dialogue with the responsible parties. The Observatory does not under any circumstances impose fines or sanctions or institute judicial proceedings but instead issues recommendations to the producers of the messages in question.

263. The Observatory's objectives are:

(a) To monitor and analyse the form and content of radio and television programmes that may include some type and/or form of discrimination;

(b) To assess messages and representations transmitted by the media that could be offensive to a given group or social sector, and to draw up conclusions and recommendations in relation to the material examined;

(c) To issue conclusions on the content it has analysed and to create opportunities for dialogue with media managers and those responsible for content production;

(d) To encourage community involvement in the development of alternative methods of addressing discrimination in radio and television programmes;

(e) To help enhance the theoretical and practical knowledge of the bodies concerned;

(f) To ensure respect for diversity and difference in accordance with the principle of equality for minority social groups;

(g) To foster the development and implementation of ethical and professional media standards and codes of conduct that respect and value all forms of diversity;

(h) To promote the development of mass communication campaigns (in particular radio and television announcements) in order to raise awareness of discrimination and encourage the inclusion in programmes and advertising of content that makes viewers aware of the value of diversity and of a multicultural society and of the importance of mutual respect, solidarity and integration;

(i) To promote ongoing refresher and other training on discrimination issues in advertising houses and media-related professional associations and trade unions.

A. Legislative and regulatory framework

264. The legislation and other instruments mentioned below serve as the general terms of reference for the work of the Observatory. In its analysis of each specific case, the Observatory will refer to supplementary regulations specific to each issue where necessary:

(a) The Constitution;

(b) International human rights treaties;

(c) Act No. 22285 on broadcasting;

(d) Act No. 23592 on discriminatory acts;

(e) Chapultepec Declaration (adopted in 1994 at the Hemisphere Conference on Free Speech organized by the Inter-American Press Association (IAPA));

(f) Code of Ethics of the Council for Advertising Self-Regulation (CONARP);

(g) Code of Ethics of the Argentine Journalism Forum (FOPEA).

265. In implementation of the policy for civil society forums developed by INADI, a forum has been established that provides a vehicle for coordination and cooperation between civil society organizations, observatories, journalists and academics with a view to formulating discrimination-related proposals and recommendations.

266. INADI also carries out mass communication campaigns using television, radio, print and electronic media. This strategy reflects the need for the Institute to take an active role in promoting the cultural and social changes necessary to eradicate discrimination. The content of these campaigns is designed to raise awareness of anti-discrimination legislation, to draw attention to discriminatory situations, to promote the rights of all and to encourage respect and appreciation for diversity.

267. Television and radio announcements have been produced that address discrimination against young people and people with disabilities, sex discrimination and, in conjunction with IOM, the problem of trafficking in persons.

268. In view of the large numbers of people who congregate in tourist centres across the country, INADI also decided to run a summer campaign, which entailed distributing leaflets and appearing at and sponsoring various large-scale public events, such as concerts and sporting, cultural and institutional exhibitions.

269. INADI has maintained a presence at numerous football matches in the Argentine Football Association (AFA) first division championship, at which promoters and young people from civil society organizations distributed flyers bearing the slogan *"*Let's play for non-discrimination" at stadium entrances and exits. An INADI banner with the slogan *"*No to discrimination" was also displayed at each match.

270. Finally, specific mention should be made of the "Music against discrimination" series (which included the "Argentine women", "Indigenous music" and "Free of discrimination" music festivals) and the *"*Art against discrimination" programme, a federal project where the works of various painters and sculptors were selected for inclusion in a major exhibition in the city of Mar del Plata.

271. The production of television and radio announcements has been one of the main thrusts of the INADI communications policy. INADI has taken advantage of the impact that can be achieved through the mass media to run campaigns to publicize the community services it provides, to raise awareness about discrimination against vulnerable groups and to disseminate information on rights in a format that values and celebrates diversity.

272. Most of these projects were undertaken in partnership with well-regarded civil society organizations, government agencies and international bodies.

273. With regard to content, it was decided that institutional channels for the dissemination of anti-discrimination laws and regulations should be prioritized, while at the same time publicizing the toll-free number for reporting cases of discrimination (0800-999-2345), the INADI web page and other public access and support tools.

274. Although television and radio announcements have concentrated on the general prohibition of discrimination, priority attention has been devoted to discrimination against young people, discrimination against persons with disabilities and sex discrimination.

275. Accordingly, the campaign based on the slogan "Don't let them shut the door in your face" focused on the issue of nightclub admittance and spread the message that "Discrimination is a killer, if they discriminate against you by denying you entry. Violence against young people is a crime."

276. The issue of sex discrimination was addressed from the angle of equality in employment. The message chosen was "For the same work, women earn on average 35 per cent less than men. The Constitution bans sex discrimination. Equal pay for equal work."

277. Attention was drawn to discrimination against persons with disabilities via the message: "Discrimination undermines a person's right to work, health, education and leisure. In Argentina, more than 2 million people with disabilities who would like to be part of society suffer from discrimination on a daily basis."

278. Short television and radio pieces on discrimination on the basis of obesity, poverty and marginalization, and xenophobia are currently in the preparation stages. These topics were selected because of their prominence on the discrimination maps that INADI has been drawing up for the different provinces and correspond to the community's own perceptions.

279. In implementation of Proposal No. 213 of the National Plan against Discrimination, which calls for systematic inclusion in large-scale programmes, INADI has been organizing meetings with producers of radio and television content to encourage them to introduce an appreciation of diversity into mass media and to combat stereotyping and discriminatory treatment. It also gives advice on how to improve this content. These measures have helped draw attention to cases of discrimination and its inclusion in both fiction and documentary programmes.

280. Lastly, the television programme "INADI with you" was launched in November 2006 and is broadcast once a week on a cable channel. More than 50 episodes, in which experts and representatives from organizations and all areas of civil society discuss a broad spectrum of discrimination-related issues, have been produced so far. INADI also has a short slot on two news programmes that are aired on two different channels.

Annexes

Annex I

Legislation

Law on migration (Act No. 25871)
Adopted: 17 December 2003
Promulgated: 20 January 2004
Text: www.infoleg.gov.ar/infolegInternet/anexos/90000-94999/92016/norma.htm

Law on the comprehensive protection of the rights of children and adolescents (Act No. 26061)
Adopted: 28 September 2005
Promulgated: 21 October 2005
Text: www.infoleg.gov.ar/infolegInternet/anexos/110000-114999/110778/norma.htm

Law on surgical methods of contraception (Act No. 26130)
Adopted: 9 August 2006
Promulgated: 28 August 2006
Text: www.infoleg.gov.ar/infolegInternet/anexos/115000-119999/119260/norma.htm

Law on indigenous communities (Act No. 26160)
Adopted: 1 November 2006
Promulgated: 23 November 2006
Text: www.infoleg.gov.ar/infolegInternet/anexos/120000-124999/122499/norma.htm

Law on refugee recognition and protection (Act No. 26165)
Adopted: 8 November 2006
Promulgated: 28 November 2006
Text: www.infoleg.gov.ar/infolegInternet/anexos/120000-124999/122609/norma.htm

Law on racial discrimination (Act No. 26162)
Adopted: 1 November 2006
Promulgated: 24 November 2006
Text: www.infoleg.gov.ar/infolegInternet/anexos/120000-124999/122501/norma.htm

Law on the prevention and punishment of trafficking of persons and assistance for its victims (Act No. 26364)
Adopted: 9 April 2008
Promulgated: 29 April 2008
www.infoleg.gov.ar/infolegInternet/anexos/140000-144999/140100/norma.htm

Resolution No. 671/2008 of the National Social Security Administration
Adopted: 19 August 2008
Text: www.infoleg.gov.ar/infolegInternet/anexos/140000-144999/143820/norma.htm

Annex II

Court decisions regarding the ancestral possession of indigenous lands

1. On 12 August 2004 in the case of *Sede, Alfredo et al. v. Vila, Herminia et al.*, the Civil, Commercial and Mining Court of First Instance No. 5, with sole jurisdiction for San Carlos de Bariloche in Río Negro Province, ruled that: "(3) Therefore, the respondents' community owns the lands in question because that ownership is recognized by existing constitutional provisions and legal statutes. Let it be clearly understood that indigenous peoples' communal ownership is not analogous to individual ownership as defined in the Civil Code. The Constitution states, categorically and unambiguously, that traditional occupation of land by an indigenous community is to be considered communal ownership even if the members of the community in question have not performed acts of ownership such as those specified in the lower-ranking law (art. 2384 of the Civil Code). The Constitution itself tells us that these communities have legally possessed this land and continue to do so for the simple reason that they pre-date the State and maintain their traditional use of the land. Communal possession and ownership by indigenous peoples are new legal concepts that clearly call for some adaptation of existing laws (...). These forms of possession and ownership should be respected whenever a community that maintains traditional possession is identified, even if the required legal modifications have not yet been completed. In any event, the ratification of ILO Convention No. 169 (Act No. 24071) provides the current legal framework for the relevant provision in the Constitution. In the course of the Eighteenth National Civil Law Colloquium, the conclusion was reached that indigenous possession and ownership are new and specific concepts that have an influence on the very concept of ownership rights. Attention was also drawn to the fact that they have the rank of constitutional and supreme law and are to be differentiated from and independent of lower-ranking civil laws. It was noted that, given the protection of indigenous communities' ownership rights afforded by article 75, paragraph 17, of the Constitution, the inclusion of these concepts in the Civil Code is unnecessary and would be inappropriate because this would imply a lowering of rank not sought by the authors of the Constitution (Conclusion VI). The panel asserted that any attempt to devise a separate legal definition of these concepts that would equate them with what are essentially private property rights covered by lower-ranking statutes of private law as a means of affording them greater guarantees would constitute a "counterproductive, objectionable endeavour that would lower the legal stature which the Constitution has conferred upon indigenous communities and their ownership rights for the express purpose of making reparations for historical events" (...). Questions such as whether the respondents were or were not born in a specific place, whether they resided there continuously or off and on, whether they worked the land on their own or for another's benefit, etc. (...) are therefore irrelevant. It is also beside the point whether any one of these persons has or has not recognized someone else as being in possession of the land in question, since these ownership rights are inalienable and can therefore not be transferred (art. 75, para. 17). The only material facts are whether or not the community has traditionally resided in that location and whether or not the persons concerned belong to that community. Those circumstances constitute communal possession conferring a right to hold community property. The claim that a member of the indigenous group transferred title unilaterally is blatantly at odds with constitutional law because, under the new Constitution, the land has always been possessed by and for the community. The title has always been the same; there has been no change or alteration whatsoever. It is highly improbable that the members of an indigenous

community would have performed acts of ownership of the sort outlined in the Civil Code following the conquest and the ensuing flow of immigration, given the characteristics and after-effects of these two historical events (...)".

2. The Criminal Court issued its finding in the case of *Nahuel Florentino Arsenio – Ñancucheo Roberto Oscar – Velásquez Martín – Pintos Fidel* (Case file No. 3302, p. 69, 2004) in the city of Zapala, Neuquén Province, on 19 June 2007. The defendants were charged with a real concurrence of offences involving the use of violence or threats to interfere with the possession or tenure of real property (three counts) (article 181, paragraph 3, and article 55 of the Criminal Code). It was alleged that, on 17 September 2001, Florentino Arsenio Nahuel, Roberto Oscar Ñancucheo, Martín Velásquez and Fidel Pintos positioned themselves in a rural sector known as Puesto Rezuc and then proceeded to use violent means to block the main road leading to the Loma Negra oilfield by placing various obstacles (carts, gear, vehicles, tyres, etc.) in the way, thereby preventing personnel from Pioneer Natural Resource Company from proceeding with work they had begun at various wells and at the collector battery, all of which were involved in ongoing drilling operations. It is also alleged that they prevented the departure of vehicles operating under concessions granted by the provincial government to the above-named company. In a unanimous decision, the Court dismissed the charges of use of violence or threats in a real concurrence of offences by the four men in an attempt to interfere with Pioneer Natural Resource Company's possession or tenure of real property (article 181, paragraph 3, and article 55 of the Criminal Code). The settlement of the Lonco Purrán community is located on the land where the incidents in question occurred. The Court established that the Lonco Purrán community was indeed settled on the lands in question, noting that this finding was supported by the four accused men's statements and particularly that of Fidel Pintos, who related that his grandfather had lived on this land for over 100 years and that he and his father had built the road leading to the refinery and the community (...). An analysis of the statements made provided sufficient grounds to determine that the Lonco Purrán settlement was on the land at issue in this case, which included the access road on which the incidents in question took place. This being so, the above-mentioned statutes applied (article 75, paragraph 17, of the Constitution of the Argentine Republic and article 53 of the Constitution of Neuquén Province). The Court therefore found that the incidents in question occurred on land belonging to the indigenous community and, since the community owns and possesses the land in question, it was impossible for the accused to have committed the act of interference referred to in article 181, paragraph 3, of the Criminal Code. The accused were therefore found to be not guilty (opinion of Dr. Manchini).

3. In 2001, the Civil and Commercial Court of Jujuy Province recognized the communal ownership rights of over 200 families belonging to the Quera and Agua Caliente peoples over the land they occupy in the Department of Cochinoca in the northern portion of Jujuy Province. Chamber No. 1 of the Court recognized the community's ancestral possession of this territory within the province in question in accordance with the right to communal possession and ownership under article 75 of the Constitution. The circumstances surrounding this case date back to 1946, when the members of the Cochinoca peoples engaged in a march known as the *Malón de la Paz*. The march lasted for three months, until the participants reached Buenos Aires, where they presented their claims to the then President Juan Domingo Perón and demanded recognition of their identity as indigenous peoples, of their right to their land and of their right not to pay rent.

4. On 14 September 2001 in San Salvador de Jujuy, the capital city of Jujuy Province, Argentina, the judges presiding over Chamber No. 1 of the Civil and Commercial Court heard a claim lodged by the aboriginal community of Quera against the provincial government. The community claimed to have ancestral possession of the lands on which it is settled and argued that this right is recognized by the Constitution and provincial Act No. 4394/88. The only specific issue raised by the respondent was that it was impossible for a

community that did not acquire legal capacity until 1996 to claim possession for a period of over 20 years; the respondent did not question the claimant community's legal capacity as such, but rather disputed the community's ability to have possessed the land in question for over 20 years in view of the more recent date on which legal status had been granted to it. "(...) the claimant community has successfully demonstrated that it possessed and possesses the land with intent to hold it (*animus domini*), not only for over 20 years but since pre-Hispanic times. Under the existing legal system, in order to establish possession *ad usucapionem,* evidence is required to corroborate the testimony given to that effect and to demonstrate the presence of the elements which are required by law in order for ownership *ad usucapionem* to be acquired. In addition to hearing the witnesses' testimony to this effect, the Court was able to appreciate the full significance of the concept of "communal ownership" when we accompanied the members of this aboriginal community on a tour of the land in question in its entirety. They travelled as a group from one cluster of domiciles to another, at each one showing us their own dwellings and the common areas. They showed us how they make wise and communal use of the few natural resources they have, how they move their livestock (primarily llamas and sheep) down from the highlands to the lowlands, depending on the season, for the best grazing." "In short, the testimony given and the first-hand inspection leave no doubt as to the fact that the possession of the land in question is not only communal but is also peaceful, continuous and has not been interrupted since time immemorial and that it has been exercised collectively *animus domini*. This conclusion arises from the age of existing buildings and other structures and from the fact that every member of the community is a descendant of the ancestral aboriginal inhabitants of the area and, as such, are carrying on the act of possession that began with those inhabitants. This being so, the statutory time period required by law for this type of action has been far more than fulfilled. (...) All the evidence refutes the line of reasoning advanced by the provincial government, whose counter-arguments appear to be based on the idea that it is impossible for an entity that has only recently been granted legal status to claim that it has been in possession of a good for at least 20 years. This argument, as we have already noted, stems from a conceptual error and a failure to grasp the meaning of the right recognized in the Constitution of 1994. That right is not one corresponding to the legal entity registered as such in order to fulfil a legal requirement, but is rather the right to communal ownership held by the indigenous peoples whose pre-existence is acknowledged in the Constitution. No further commentary on the subject is therefore necessary. Bearing in mind the demonstrated fact that the property in question is held with *animus rem sibi habendi*, this principle must be interpreted in a way which favours the possessor of the land, that is to say, the people who have its usufruct. The judges in this case must use their powers to arrive at a reasonable interpretation in recognizing the legitimate right of those who possess and use this real property productively versus the barren prerogative of the holder of the title papers (cf. opinion of Dr. Arauz Castex in the judgement of CNCiv., Chamber A, 1952, L.L. 68-190)" (opinion of Dr. María Rosa Caballero de Aguiar). Chamber No. 1 of the Civil and Commercial Court therefore admitted the complaint and found in favour of the indigenous community of Quera and Agua Caliente of the Cochinoca peoples with regard to their ownership of the real property identified as Rural Lot 118, Rodeo 40, Registration No. K-855, Area 1, Section 7, in the Department of Cochinoca. Ownership of this property is subject to the restrictions stipulated in article 75, paragraph 17, of the Constitution, which should be noted in the margin of the property registry entry (art. 3, Act No. 5131).

5. On 11 July 2002, the Supreme Court issued its judgement in the case of the *Indigenous community of the Wichí people at Hoktek T´Oi v. the Secretariat of the Environment and Sustainable Development*. The Supreme Court took the fact into consideration that when the Court of Justice of Salta Province upheld the lower court's decision, it rejected the application for *amparo* submitted by the indigenous community of the Wichí people at Hoktek T´Oi, which was seeking to secure the invalidation of two

administrative orders issued by the provincial Secretariat of the Environment and Sustainable Development ("Permit No. 368, issued on 23 July 1996, valid until 23 July 1999 (...), which authorized the clear-cutting of Rural Lots Nos. 17564, 17569 and 17570 in the Department of San Martín (...), and the extension of that logging permit, issued on 30 November 1999 and valid until 30 November 2002 (...), applying to a 120-hectare tract of land located in Area No. 17564"). The Supreme Court found that the lower court had not framed a sufficient response to the plaintiffs' claims that their rights were not being adequately protected through regular channels. "To that end, it should have taken note of the fact that the judicial remedy of *amparo* was sought because of the environmental damage caused by the activities authorized by the Government and the possibility of further damage in the future. These activities included deforestation and its irreparable consequences, such as the loss of species (alteration of biodiversity), climate change and desertification (caused by soil erosion and salinization). The application for *amparo* was also prompted by the establishment of operations on several hectares bordering on the indigenous community's settlement (land on which some of its members also live). A well that supplies the community with water is located on this land, as well as the school and a dam, both of which were built by and for the members of the community." The Supreme Court found that the judgement handed down by the Superior Provincial Court had a direct and immediate adverse effect on the right to due process and that, regardless of what decision may be reached regarding the substantive matters at issue, "its judgement should be set aside in the light of the principles upheld by the Supreme Court with respect to arbitrary judgements."

6. In December 2003 in San Salvador de Jujuy, Jujuy Province, Chamber No. 2 of the Civil and Commercial Court heard the case of *Aboriginal community of Laguna de Tesorero – Ocloya people v. César Eduardo Cosentini*, in which the Laguna de Tesorero community lodged a claim for adverse possession against Mr. Cosentini. The Court noted that it had, on repeated occasions, maintained that adverse possession proceedings initiated under article 24 of Act No. 14159 as amended by Decree-Law No. 5756/58 were adversarial proceedings in which a declaratory judgement had the force of res judicata with regard to the previous owner. Dr. Noemí A. Demattei de Alcoba said: "It should be recalled that the 1994 Constitution not only recognizes the ethnic and cultural pre-existence of the indigenous peoples of Argentina, but also guarantees the legal status of their communities and the communal possession and ownership of the lands they have traditionally occupied (art. 75, para. 15). The object of this provision is to give effect to the guarantees provided for their ownership of their communal lands, in addition to other rights. This right is truly important because it recognizes the fact that these aboriginal communities pre-date the State. The corresponding protective measures include the assignment to them of the lands that they have traditionally occupied; they are thus guaranteed ownership of the possessions that they have held for many years (spatial and temporal categories translated into specific, tangible terms). The *ratio legis* of article 3418 of the Civil Code is also applicable; in accordance with the principle of accession, a holder of property may combine his or her ownership with that of the deceased and add the two together in order to complete the time period required by law. We are of the view that this principle is applicable here, inasmuch as the right of the community that has acquired legal capacity to hold communal property is expressly protected by the Constitution; the group which constitutes this collective exercises this authority as an assemblage of new rights (articles 2, 7, 9 and conclusions of Act No. 23302 and Act No. 24071; articles 2 and 3 of provincial Statute No. 5030 as amended by Act No. 5131). The Constitution stipulates that these lands must have been occupied "traditionally"; clearly, this can only occur by means of the accession of possessions that the groups in question acquired, in a both temporal and spatial dimension, and handed down collectively from generation to generation, until those possessions reached the hands of this community, which, thanks to the constitutional reform, was able to obtain legal capacity as provided for in pages (...)". In her written opinion, Dr. Demattei

de Alcoba concluded that the members of the community had possessed the land, with intent to do so, for more than the length of time required for recognition of ownership. The majority opinion, however, was that this claim of adverse possession by the indigenous community of Laguna de Tesorero – Ocloya people should be rejected.

7. In San Salvador de Jujuy, Jujuy Province, on 27 December 2005, the Superior Court heard the request for a constitutional review brought as Case No. 2397/04 (File No. B-25.032/97; Chamber No. 2 of the Civil and Commercial Court; claim of adverse possession in *Aboriginal community of Laguna de Tesorero – Ocloya people v. César Eduardo Cosentini*). "With regard to the first grievance raised by the applicant, i.e., failure to recognize the legitimacy of the claimant community, I believe that the majority opinion misinterprets the applicable provisions by considering that the party in question did not become a subject at law until the promulgation of Decree No. 2303-G on 3 January 1995 and that it could not therefore claim to have possessed the land for 20 years. As argued by the applicant, the provisions of article 45, among others, of the Civil Code cannot be read in isolation from all the other statutes that currently govern the rights of indigenous communities" (written opinion of Dr. González). "... In reviewing the documentation, I find that the indigenous community of Laguna de Tesorero – Ocloya people has demonstrated its possession of the lands identified in Survey Map No. 3 with intent to do so and that its members live communally in accordance with the organizational customs and forms of shared living handed down by their ancestors from one generation to the next." "The documentation establishes that the claimant community alone has exercised communal possession and *animus domini* over these lands continuously and ancestrally." "Another piece of information that is extremely compelling in corroborating ancestral occupation is the statement made by Silvia Adirana Paoloni, a social worker, who saw the graves of the current inhabitants' ancestors in the local cemetery. Some of the graves are ancient. The headstones of some of the others bear inscriptions dating back to the early years of the century and indicate that the persons buried there were born in 1800. As for the question of *animus domini*, basic logic leads to the conclusion that the people who have tilled, planted and fenced the land, as well as building their houses, setting up community facilities and even placing their cemetery on it, and who have done so publicly and continuously, have been exercising possession with *animus rem sibi habendi*, behaving as the true owners without recognizing any other as having that right. The evidence which I have outlined and which, in my view, corroborates the existence of public, continuous ancestral possession as owners of the property was not weighed by the two judges who disallowed the claim." "A brief reference should be made here to article 2401 of the Civil Code, which the majority opinion cited as grounds for assuming that individual and collective possession of real property cannot both be exercised at the same time. That provision — which refers to the impossibility of having two or more people exercise equal possession of the same nature over a single good, since, clearly, one would exclude the other — should in this instance be interpreted in the light of the particular features of the right in question, i.e., the right to communal ownership of aboriginal land, because such ownership differs from individual ownership and should therefore be assessed by different means." In accordance with the opinion of Dr. Sergio Ricardo González, the Supreme Court of Jujuy Province consequently upheld the claim of unconstitutionality lodged by the indigenous community of Laguna del Tesorero – Ocloya people and, on that basis, proceeded to set aside the judgement issued by Chamber No. 2 of the Civil and Commercial Court on 15 December 2003: "I. To uphold the adverse possession claim lodged by the indigenous community of Laguna de Tesorero – Ocloya people against César Eduardo Cosentini and, in consideration thereof, to recognize the claimant's communal ownership of Rural Lot 289, Registration No. A-4.281, Entry A-23.065-4281, located in the Ocloyas District of the Department of Dr. Manuel Belgrano, whose boundaries, measurements and surface area are specified in the survey map approved by the General Property Directorate (Decision No. 970.291); II. To direct that the claimant's title to this communal property be registered, with a notation

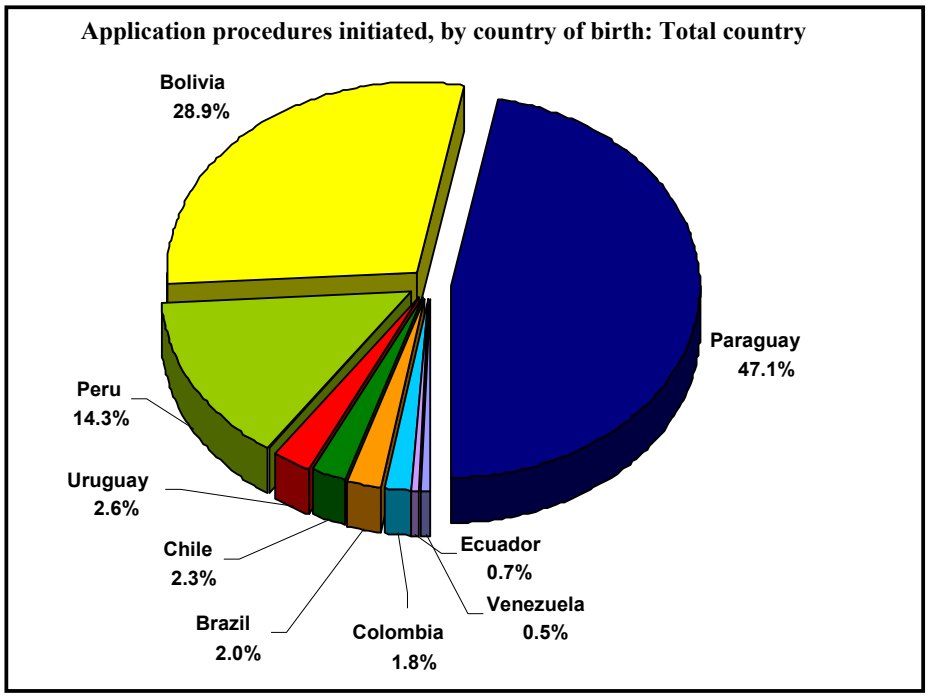
be made in the margin attesting to the fact that it is inalienable, imprescriptible and not subject to liens or attachment."

8. On 7 February 2007, the Superior Court of Río Negro rejected the request made by the owners of a tract of rural land for the issuance of an eviction order to a number of members of the Millape family, which belongs to the Mapuche community of Paso de los Molles. The defendants included the Mapuche sisters Dominga and Felisa Millapi, who were born on this property over 80 years ago. The property in question had been occupied since 1933 by José María Galván, and the necessary improvements for that purpose had been made (e.g., settlement, fencing, marks and signs, and other acts of ownership). Following the death of José María Galván's first wife, the original family was joined by the defendant Dominga Millapi, who cohabited with Mr. Galván and with whom, as attested to in the course of these proceedings, she had already had two children by September 1943: a 2-year-old named Elsa and a 1-year-old named Santiago (both of Argentine nationality). Other children were born later on. It was argued that a portion of the 2,500 hectares that were originally requested (and to which title was eventually registered) had been encroached upon by Settlers Nos. 28, 29 and 30, "who are living in the south-eastern portion of these lands and who should be removed from them, since they are rented to Mr. Galván. There would be no problem if there were appropriate plots available for them to settle upon, but since there are not, a solution for this problem has to be found." The eviction order was made out in the names of Santiago, Alejandro and Aquilino Galván and that of Dominga Millapi, who had cohabited with Mr. Galván (original owner) since at least 1940 and who continued to possess the same rural home (the only dwelling on the site), which she shared with the children of the Galván-González (first) marriage and those of Mr. Galván with Ms. Millapi. According to the principle on which the decision is based, the traditional settlement of land by indigenous peoples conveys a greater right to "legally" own a given parcel of land than possession of a title deed to that land does. It thus reaffirms a new legal principle whereby eviction proceedings would no longer be an appropriate means of removing members of an indigenous community from their traditional territory because this would run counter to the principle of the "pre-existence" of indigenous peoples and would infringe upon their rights to communal ownership and possession of the lands that they have traditionally occupied, both of which are expressly recognized by the new Constitution. The judge of first instance had granted the petition and had ordered Messrs. Santiago, Alejandro and Aquilino Galván and Ms. Dominga Millapi, as well as any other subtenant and/or occupant, together with the things or persons dependent upon them, to vacate the dwelling located at the summer pasturage area at Paso de Los Molles, Pilcaniyeu Department, Río Negro Province, with the property to be returned to Mr. John Gilbert Ogilvie and Ms. Silvia Elina Tortorelli within a period of 10 days as prescribed by law. The substance of this decision was upheld by the Civil, Commercial and Mining Appeals Court. In his written opinion, Dr. Luis Lutz stated that "the law protects property in its various legal forms and expressions by different means: by means of replevin in the case of dominion; by acts of ownership in the case of possession; by means of restraining orders in the case of tenure; and by eviction orders in the case of usufruct. The documentation in this case clearly concerns eviction, based on a personal, rather than real, action. Within the limited framework of eviction proceedings, it is therefore inappropriate to deliberate and decide, as was done in the judgements being challenged here, upon the dominion and/or preferential right to possess the real property in question. 'An eviction order is not a suitable means of determining an issue of *ius possidendi* and *ius possessionis*.' The Superior Provincial Court first decided to admit the application for judicial review submitted by the co-defendants Santiago Galván and Dominga Millapi; it then overturned the decision of the Civil, Commercial and Mining Appeals Court to reaffirm the judgement of first instance and rejected the petition in the form it was presented".

Annex III

"*Patria Grande*" programme (results to 24 October 2008)

1. In application of the MERCOSUR nationality criterion established in the law on migration (Act No. 25871), 609,839 migrants were able to apply for legal residency under the *Patria Grande* programme between 17 April 2006 and 17 October 2008.



Source: Office of International Affairs, National Directorate of Migration (DNM).

Country of birth	*Application procedures initiated by persons who entered the country before 17 April 2006*	*Application procedures initiated by persons who entered the country after 17 April 2006*	***Total***
Bolivarian Republic of Venezuela	218	2 549	**2 767**
Ecuador	936	3 302	**4 238**
Colombia	1 246	9 586	**10 832**
Brazil	4 598	7 631	**12 229**
Chile	5 348	8 499	**13 847**
Uruguay	10 790	5 135	**15 925**
Peru	47 463	39 646	**87 109**
Plurinational State of Bolivia	104 255	71 941	**176 196**
Paraguay	247 615	39 081	**286 696**
Total	**422 469**	**187 370**	**609 839**

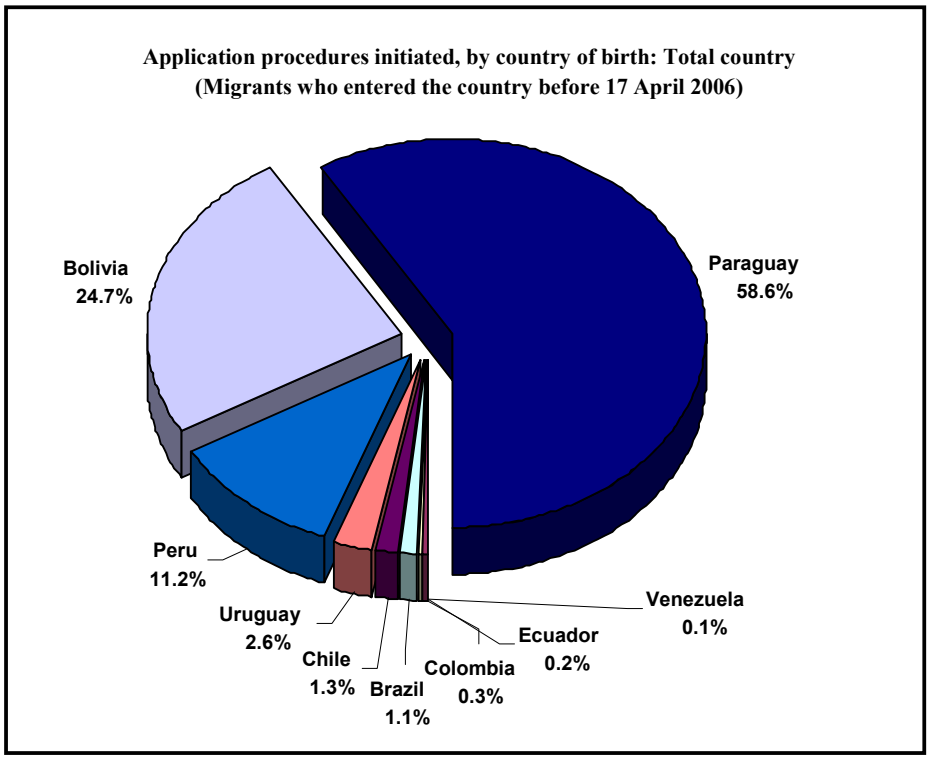
Source: Office of International Affairs, National Directorate of Migration (DNM).

2. The *Patria Grande* programme is not an amnesty but instead henceforward constitutes a State policy.

Disaggregated statistics

Migrants from MERCOSUR member and associate member States who entered the country before 17 April 2006.

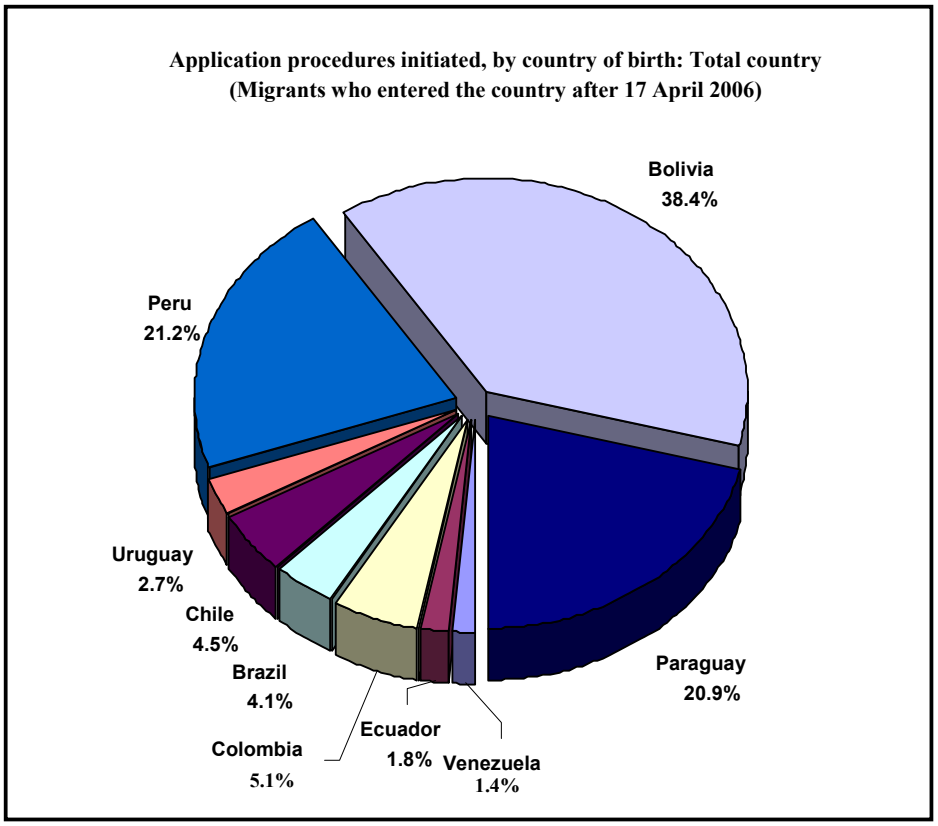
Total: 422,469 migrants who have initiated residency application procedures



Source: Office of International Affairs, National Directorate of Migration (DNM).

Migrants from MERCOSUR member and associate member States who entered the country after 17 April 2006 and applied for residency under the nationality criterion.

Total: 187,370 migrants who have initiated residency application procedures



Source: Office of International Affairs, National Directorate of Migration (DNM).