REPORT ON COMPLIANCE WITH THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (CERD) IN THE FRAMEWORK OF THE XXI-XXIII CYCLE OF REPORT PRESENTATIONS BY ARGENTINA TO THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION [91st PERIOD OF SESSIONS, 2016]

RIGHTS OF MIGRANT PERSONS

Esteemed Committee Members:

We come before you on behalf of the Abogados y Abogadas del Noroeste Argentino en Derechos Humanos y Estudios Sociales (ANDHES); Centro de Estudios Legales y Sociales (CELS); Centro Integral de la Mujer Marcelina Meneses; la Comisión Argentina para Refugiados y Migrantes (CAREF); Fundación Comisión Católica de Migraciones y Turismo (FCCAM); Generación Evo; El Instituto Argentino para la Igualdad, Diversidad e Integración (IARPIDI); el Programa Migración y Asilo del Centro de Justicia y Derechos Humanos de la Universidad Nacional de Lanús; la Red de Migrantes y Refugiadxs en Argentina; OTRANS Argentina; Todo en Sepia Asociación de Mujeres Afrodescendientes en la Argentina with relation to the fifteenth regular report submitted by the Argentine State on the application of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). The aim of this presentation is to make available to you the alternative report prepared by a broad coalition of organizations, describing the progress, regression, failures and omissions by the Argentine State with regard to its duty to respect, guarantee and enforce the rights contained in the Convention, with special focus on the migrant population in Argentina. Please note that the information contained herein is not exhaustive as to the full range of problems associated with the implementation of the Convention in the country.

The report includes suggested questions and recommendations for the issues raised, to be borne in mind by the Committee at the review hearing scheduled for the 91st Session, as well as when issuing its Final Observations on Argentina.

We are at your service for any further clarification or additional information you may need.

Sincerely,

I. Opening Remarks

1. Argentina is the Southern Cone country with the most far-reaching migration tradition in the region and continues to be the one with the greatest number of immigrants. The migrant groups historically recognized in the country are principally of European origin[1] and from other Latin American countries, such as Bolivia, Chile, Paraguay, Uruguay and Peru.[2] In the 1990s, migrants began arriving from sub-Saharan Africa, including Senegalese, Nigerians and Ghanaians, among others. The past 15 years have brought an increase in flows from Colombia, Venezuela, Ecuador, the Dominican Republic, Haiti, China, Japan and Korea. According to the latest census from 2010, Argentina currently has a foreign population of 4.5%, numbering 1,805,957 people. The most represented groups are Paraguayans (30.5%); Bolivians (19.1%); Chileans (10.6%); Peruvians (8.7%); Italians (8.2%) and Spaniards (5.2%). Only 0.2% of migrants originate from Africa and Oceania and 0.5% from China.

2. As the Committee is aware, Migration Law 25.871 of 2003 and its regulatory decree 616/2010 substantially changed the way in which migrant's rights are regulated in Argentina. These regulations revoked a decree-law on migration enacted under the last military dictatorship in 1981, referred to as the "Videla Law". For years that law, inspired on the rationale of national security, laid the conditions that led to a significant number of migrants living in irregular migratory status, who were furthermore persecuted through mechanisms and procedures that did not respect their rights or guarantees. More than 20 years under a paradigm that criminalized migration left a deep impression on the habits of many public and judicial officials, who, in a variety of situations, used irregular migratory status and phenotypic traits as grounds for discriminatory or racist practices.

3. Law 25.871 establishes the human right to migrate, access to regularization processes as a state obligation[3], the right to free public defense, and guarantees judicial review of any deportation or detention proceedings; it establishes effective suspension of administrative decisions on deportation until the last judicial recourse has been resolved upon; the right to consular protection and to have an interpreter in native language. The law likewise eliminates distinctions in terms of access to rights among nationals and foreigners, and furthermore includes clauses on equality and non-discrimination compared to nationals with regard to economic, social and cultural rights, such as work, health and access to justice, among others. This law was commended by the Committee in its final observations of 2004. Moreover, it must be underscored that **the central guiding concept of the Migration Law currently in force in Argentina is the regularization of all migrants**, given that irregular migration status is one of the key factors in discrimination and inequality when it comes to migrants access to rights.

4. Migratory regularization programs – also highlighted by this Committee in its last report on Argentina in 2010 – have certainly had a great impact in recent years on the number of resolutions passed on permanent and temporary residency, in addition to guaranteeing more expediency and transparency in the process. The official figures for **2004 through the first semester of 2015** indicate that a total 2,332,389 requests were submitted for the different residency categories, of which

[1] Groups of Europeans arrived in the country in two large waves, one between 1870 and 1929, and the other between 1948 and 1952.

[2] Latin American migration has remained relatively stable over time, but it became more visible when European immigration ceased in the mid-20th century.

[3] Article 17 of the aforementioned regulation establishes that "*The State shall facilitate the adoption and implementation of measures aimed at regularizing the migration status of foreigners."* The regulations of Law No. 616 of 2010 further specified the migration authority's legal obligations with regards to adopting measures aimed at regularizing the migration status of foreigners. An example of this is Article 17 of the decree, which establishes that "In order to regularize the migration status of foreigners, the National Migration Office may*:* a) Issue provisions that simplify and streamline respective administrative processes; b) Sign agreements and receive cooperation from public or private entities; c) Develop and implement programs in those areas of the country that require special treatment; d) Sign agreements with foreign authorities within the Republic of Argentina in order to streamline and promote receipt of documentation from those countries; e) Establish criteria for exemption from payment of the migration tax in cases of poverty or when humanitarian reasons justify such action."

2,158,601 were granted residency in the country.[4] 86.7% (1,870,194) of those cases were resolved between the years 2008-2015.

5. However, since the approval of the new law, we have identified four main shortcomings that limit the effective application of the Migration Law, to wit:

a) Flaws in the application of Law 25.871. Discriminatory criteria for migratory regularization: The obstacles and difficulties in the access to a formal residency in Argentina affect migrant persons differently according to their nationality, social and economic status, with particular impact on persons from countries outside the MERCOSUR, who face greater hindrances to obtaining regularization (an issue that will be further developed in Section III).

b) Grounds for denying regularization. Restrictive interpretation of the law: The irremediable grounds that obstruct regularization, provided in Article 29 of the Migration Law, such as entry into the country without a formal authorization or the existence of a criminal record, are applied without a corresponding assessment of the individual situation, such as whether the person has put down roots or has a family life, and without considering the flaws inherent to the border control system itself or the severity of the crime committed – situations that often end in deportation orders (issues that will be further developed in Section IV.)

c) Existing regulations that establish distinctions between nationals and migrants with regard to access to rights: These regulations fundamentally affect migrants access to their rights associated with political participation, such as the right to vote and be elected, and with regard to their social rights, specifically in terms of disability or senior pensions and on issues of conditional, non-contributory pensions, such as family allowances (issues that will be further developed in Section VIII).

d) The adoption of new regulations that limit or contradict the Migration Law: On one hand, the approval of Article 35 of the New National Procedural Code (CPPN, according to its acronym in Spanish),[5] which makes distinctions between migrants with regular and irregular migration status with regard to possible expulsion. On the other, the provision on "pseudo tourists" or "false tourists," which establishes a procedure at the time of entry into the country, whereby suspect migrants are rejected at the border based on discriminatory criteria (issues that will be further developed in Section V).

6. These four shortcomings contradict the Migration Law of 2003, and in conjunction with situations of institutional racism, police violence and lack of access to justice (issues that will be developed in Section VII), constitute a pending agenda on non-discrimination toward the migrant population in the country.

7. At present, new challenges are being presented and the shortcomings mentioned here are compounded by **changes initiated in early 2016** with the arrival of the new government in Argentina. These changes **put the core concept of the Migration Law at risk: migratory regularization as a State obligation and as a rights of the migrant.** Of the new decisions, we would highlight on one hand that regularization programs – considered positive practices by this Committee – are showing a shifting mindset toward the idea of persecution and sanctioning of irregular migratory status, resulting in a greater number of deportations. Furthermore, in the month of August, the creation of a new migrant detention center was announced. (These issues will be further developed in Section II).

8. It is due to the sum of these issues that we urge this Committee to state on the importance of sustaining the rights-based rationale of the Migration Law, which advocates for the State to effectively comply with all the provisions of Law 25.871 and its regulatory decree; and furthermore, for the Committee to call the State's attention to practices and norms that represent a setback vis a vis the regulatory framework in force in Argentina.

[4] It is necessary to take into account that regularization occurs in two steps: temporary or precarious residence is requested first and permanent residency after that, so the number of requests granted does not reflect the number of regularized migrants in the country, since one person may have initiated several migration requests.

[5] Although the CPPN is not yet in force, the very inclusion of a discriminatory regulation which contradicts the standards of equality before the law is of concern.

II. Current political context and changes in State practices. (CERD Articles 2, 5 and 7 and paragraphs 6, 7, and 29 on list of issues)

II. 1. Migratory irregularity as a core element of discrimination. (CERD Articles 2, 5 and 7 and paragraphs 6 and 7 on list of issues)

9. After the implementation of several migratory regularization programs in previous years[6], in 2013 the territorial approach program (Annexes 1 and 2) was put into effect, aimed at carrying out mobile satellite operations for the purpose of facilitating migration procedures in somewhat far locations in the country where significant numbers of migrants are concentrated. Migrant persons would attend with the documentation they had in hand and were oriented with regard to any lacking documentation. They were also given appointments to initiate the process at the main migration delegation office or one nearby, or were directly given dates to meet their requirements and for the full process to be completed at their home using these mobile units. Likewise, at that time delegations of the National Migration Office (DNM, according to its acronym in Spanish) were opened in areas of high migrant concentrations at different points in the country. Both programs had a strong impact on the increase in number of regularizations in recent years, as we pointed out in paragraph 4.

10. **In 2016, the territorial approach program ceased to exist, leaving only the so-called "residency control operations" intensely publicized through social networks**. These residency control operations present a rationale very different from the one pursued by the territorial approach program. Even though they are claimed to be based on the idea of "the struggle against human trafficking and slavery," the **overarching objective is to ascertain irregular migration status, formally notifying migrants to regularize it** (Annexes 3 and 4) without advising them on the procedures available and the requirements for their regularization.[7] Exercising residency control operations without proper advising limits migrants' possibilities to successfully complete the regularization process.

11. The DNM itself publicized that it had carried out more than 8000[8] residency control operations by August 2016 (Annex 5). The operations are directed especially at places of high migrant concentrations and at workplaces, such as textile shops (Annex 6), construction sites (Annex 7), markets run by the Chinese community (Annex 8), and brickyards (Annex 9); but they are also done on the street (Annex 10) and on long-distance buses (Annex 11). It is important to also underline that these operations are in some cases directed toward migrants **in the presence of police** (Annex 12) and are more fervently targeted at certain nationalities, such as citizens from outside the MERCOSUR. As can be noted in the annexes, **these operations are strongly promoted through social media, contributing to the stigmatization of migratory irregularity and the migrant population as a whole, advancing irregular migration as a crime**. The emphasizes on residency control operations and the closure of the specific advisory program on migratory regularization (territorial approach) sets off alarm bells to a shift in the focus of current migration policy practices.

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[6] An initial action was promoted by Decree No. 836/2004 with the creation of the National Program for Normalization of Migration Documents, which helped not only MERCOSUR citizens but also citizens of countries outside the region. Later, through Decree 578 of 2005, the "great homeland" program (*Patria Grande* Program) was created to help rectify some difficulties in procedures for migrant persons from the South American region, who are quantitatively the largest migrant group in the country and had serious problems in the regularization process. The effectiveness of these programs was widely criticized, which led to the design of more comprehensive regularization programs, such as creation of the territorial approach program.

[7] Law 25.871 also modified the specific and obligatory procedure for determining the regular or irregular status of a foreigner in Argentina. In this sense, Article 61 of the immigration law establishes that: "Once the irregular status of a foreign has been determined, and considering the foreign national's professional circumstances, as well as his or her family relations to Argentine nationals, the duration of his or her proven stay, and any other personal and social conditions, the National Migration Office shall require the foreign national to regularize his or her status in the peremptory term established for this purpose with a warning that his or her deportation may be decreed. If the end of the term is reached without regularization of migration status, the National Migration Office shall decree the expulsion with suspensory effect and shall intervene and act as a party before the respective Judge or Court responsible for reviewing the administrative decision for expulsion."

[8] While the residency control operations were implemented years ago, the difference is that as of 2016, the territorial approach program no longer exists. The number of residency control operations reached its highest peak in 2016. According to DNM institutional memory reports, nearly 11,500 total operations were carried out between 2008 and 2012; in 2013, more than 4,000 were recorded, and in 2014, the total reached 7,466. By August 2016, more than 8,000 of these operations had already been carried out.

II.2. Increase in expulsion orders (CERD Articles 2, 5 and 7 and paragraphs 6 and 7 on list of issues)

12. In response to a request from the Universidad Nacional de Lanús, the National Migration Office reported an increase in the total number of expulsion measures (Annex 13). **In 2014, there were 1,760 expulsion orders, 1,908 in 2015, and as of September 2016 there were 3,258, a 70% increase in comparison to the previous year.** Of those, it is noteworthy that there were nearly triple the number of expulsions due to denied regularization on grounds of "entry at an unauthorized point of entry" compared to 2015. As of September 2016, expulsions orders of this type totaled 974, while there were 340 in 2015 and 118 in 2014.

13. It is likewise important to underline the increased number of expulsion orders due to residency control procedures. **In 2014, there were 1,332 expulsion orders on grounds of irregular migration status; that number fell to 1,204 in 2015, but there had been 1,867[9] based on these grounds as of September 2016, an increase of nearly 40% compared to previous years.**

14. These increases are especially concerning if one considers the historical failings with regard to: ensuring effective judicial review of measures taken by the administration; the right to free, public defense and access to an interpreter in one's own language during the expulsion procedure. To this, we would add the shortcoming related to a comprehensive interpretation of the law, favorable to the migrant's legal situation, such as prioritizing family status and the putting down of roots over administrative infractions.

II. 3. Announcement of a new detention center (CERD Articles 2 and 5 and paragraphs 6, 7 and 29 on list of issues)

15. In this context of regularization resources being cut back and increasing expulsion orders, the government made an announcement in August 2016 on the National Migration Office website that it would build and open a migrant detention center as a tool to "combat migratory irregularity." This first announcement by the DNM exposed an intention that exceeds the principles set forth in **Law 25.781, which does not authorize the detention of migrants on the basis of their irregular status**. Indeed, the only situation in which a migrant person may be detained is under the exception stipulated in Article 70 of the Law, which authorizes detention only when necessary to carry out an expulsion order. The time of such custody, according to Decree 616/10, is limited to a term of 15 days (extendable a maximum of twice, e.g. a total of 45 days) and shall only have effect for people with a final expulsion order, i.e. one that is decided by a judge and not subjected to appeal . It is important to clarify that, before the deportation process can be initiated, the law requires that the administration facilitate the possibility of migratory regularization.

16. In response to the reaction from social stakeholders, this announcement was modified on three occasions (Annex 14).[10] A third version, which was finally taken down from the website, stated that there would be a detention center to hold: *"foreigners with criminal records or illegal entry into the country (…) who have final expulsions orders and are in 'custody' by reasoned court order."*

17. The possibility that migration-related detention could become a State policy is even more concerning when we consider that the detentions carried out in recent times have occurred without any guarantee of regularization, due process or judicial review. In this regard, CELS, UNLa and CAREF recently submitted *amicus curiae* briefs in a case in the municipality of Rafaela in the province of Santa Fe, where three Chinese citizens were held for more than 150 days on grounds of having entered the country by an unauthorized border crossing; they were therefore declared ineligible for regularization and the court ordered their expulsion. They were held in custody at a facility belonging to the federal security forces, without consular protection or access to an interpreter in their own language and based on expulsion orders that were not a final court decision as the law requires. These people were recently released on a sizeable bond and continue to await resolution of the expulsion

[9] This figures were taken from annex 13 (information provided by the DNM) from the cells that refer explicitly to residency control.

[10] The three versions of the announcement are attached.

order. What we have observed is that the exception under Article 70 of Law 25.871 has begun to be the rule, and is applied without a final court order and the maximum term for detention is not respected. In a recent decision in August 2016 by the 4th Criminal Appeals Court[11] in a similar case, the court ruled that the detention of four Chinese citizens was illegal; they were released after proving that their rights to due process and defense had been violated. Although this is a highly specific case, it shows how this type of detention has become a reiterated practice lately.

18. One of the justifications that the current administration has put forward for the creation of **a migrant detention center** is that some of them are being held in custody at police stations or in prisons, without having committed any crime. These places are clearly not appropriate for migration control in that they instill the idea of migratory irregularity as a crime subject to punishment, increasing xenophobia and racism. Therefore, **the creation of a detention center based on the excuse of compliance with appropriate detention conditions violates the principle of non-detention for migration-related reasons[12] and the exceptional case for detention established under Argentine law**. In light of this initiative and additional measures taken by the administration, the **question remains as to why and for whom this detention center will exist**, generating uncertainty in the migrant population about the risks of migratory irregularity when faced with potential expulsion orders that could result in detention, a situation that has not been a concrete possibility for years.

19. It should be underscored that, as of October 2016, there was no confirmation that the detention center operations had been put into effect, since the property allocated for that purpose was not deemed apt for housing people. Furthermore, the Collective for Diversity (COPADI, according to its initials in Spanish), the Movement of Professionals for the People and legislator José Cruz Campagnoli, chairman of the Buenos Aires Legislature's Human Rights Commission filed an action for constitutional protection (amparo) to stop the opening of the center, which is pending resolution.

20. Albeit with difficulties and significant limits to its application, it can be said that migration policy for the past 13 years in Argentina – established under Migration Law 25.871 and its regulatory decree 616/2010 – was aimed at promoting migration regularization as an essential tool for combatting discrimination and for the exercise of the rights held by the migrant population. The measures adopted and announced by the new government – the closure of the territorial approach program, the focus on residency control operations, the increase in deportations, the creation of a migrant detention center – put us on alert regarding the ways the State is undertaking to reconfigure its handling of migration, in which the core focus has shifted toward control, repression and persecution of migration irregularity, casting aside the idea of migration as a human right and regularization as a way to guarantee the recognition of legal status that enables the exercise of certain rights.

Questions

1. What measures has the Argentine State adopted to ensure effective migratory regularization programs?
2. What measures has the Argentine State adopted to ensure specialized legal counseling, due process and the right to an interpreter in their own language for migrant persons faced with expulsion proceedings?

Recommendations

1. The State should provide for and ensure that the operations carried out by its agencies do not have the purpose of persecuting or stigmatizing migrant persons, but rather should allow and facilitate migratory regularization.
2. The State may not under any circumstances deprive migrant persons of their freedom for reasons of migratory irregularity.

[11] Link to the ruling by the Federal Chamber of Criminal Appeals Room 4 FRO 27459/2016/CFC1 No. 1065/16.4: http://www.cij.gov.ar/nota-22930-Casaci-n-federal-hizo-lugar-a-un-planteo-contra-el-rechazo-de-habeas-corpus-a-favor-de-extranjeros-retenidos-por-inmigraci-n-irregular-hace-90-d-as.html

[12] The United Nations Special Rapporteur on the Human Rights of Migrants stated that the deprivation of liberty for reasons related to migration must never be obligatory or automatic. In accordance with international human rights regulations, it must be imposed as a last resort, only for the shortest possible period of time, and when no other less restrictive measure is available. Governments are obligated to establish in their national legislation a presumption in favor of freedom, prior consideration of alternative measures to the deprivation of freedom, evaluation of each case, and selection of the least rigorous or restrictive measure. Report of the Special Rapporteur on the Human Rights of Migrants, A/HRC/20/24, 2 April, 2012, paragraph 68.

III. Flaws in the application of Law 25.871. Discriminatory criteria for migratory regularization (CERD Articles 2 and 5 and paragraph 6 on list of issues).

21. Available statistics reveal significant progress in migratory regularization procedures since the passage of the Migration Law and its regulatory decree. Nonetheless, we would like to highlight some of the ongoing difficulties in implementation and interpretation of the law that limit access to residency in Argentina and specifically exclude certain groups of immigrants and certain nationalities, especially those who come from outside the MERCOSUR.

22. Firstly, we strongly condemn the continued specific exclusion of **workers without an employment contract and self-employed persons** from regularization policies. This practice continues despite the fact that Article 23a of Regulatory Decree 616/10 incorporated a broad interpretation of the concept of migrant worker, just as established in the International Convention on the Protection of the Rights of All Migrant Workers and their Families.[13] It is clear that the Convention grants the category of migrant worker a broad interpretation, including the array of social realities that could determine migratory flows, paid work being the prevailing factor among these. However, in practice it is impossible to initiate a residency process under this category and there is no public information regarding this norm, since only those with a formal work contract are accepted under the "employment contract" category.

23. In light of **migratory irregularity and the impossibility of access to regular residency, informal work becomes the only way for migrant workers to survive;[14] this means not only staying in informal work but also exposes them to the abuses and risks that irregular migration status can bring**. At the same time, it should be stressed that self-employment is legally admissible and fully regulated in the Argentine Republic as a worker category, whereby it is unreasonable for the National Migration Office to disregard or deny this labor category to migrant persons.

24. This particular vulnerability can be seen in all migrant communities, but **persons of African, Dominican, Haitian[15] or Chinese origin are at a greater risk of not attaining their regularization**, the majority of whom work as sidewalk vendors or for themselves, for two reasons: because many have irregular migration status and because racial discrimination prevents them from occupying other jobs.

25. One community that faces huge problems when it comes to regularization are people from the Dominican Republic. It is estimated that, as of 2016, there are 20,000-25,000 Dominicans residing in Argentina, 75% of whom are women. While they only represent 1% of foreign residents, the obstacles they face set them apart from other immigrants. The visa requirement for entry into the country (imposed in 2012 and the cause of frequent rejections at the border), as well as the difficulties posed to regularizing migratory status (since Dominicans are not included in the regularization criteria established for persons from MERCOSUR countries in the Migration Law) have significantly affected their living conditions. Between 2004 and 2014, there were some 13,000 regularization processes initiated by Dominicans applying for residency in the country. Around 10% of those requests were rejected on grounds that the applicants did not have all the requirements established under the migration law.[16] Migration authorities rejected more than 50 requests from Dominican men and women based on matrimony to an

[13] Article 2.1 of the International Convention on the Protection of the Rights of All Migrant Workers and their Families establishes that "a migrant worker shall be understood as any person who may perform, performs, or has performed remunerated activity in a State of which he or she is not a national." Article 23 of Decree 616/2010 states that in order to obtain residency as a migrant worker, the definitions set forth in the Convention will be considered. In fact, the Committee on Migrant Works and Their Families emphasized the importance of incorporating the category of independent worker.

[14] It is important to note that in Argentina, the number of people, both Argentine nationals and foreign nationals, engaged in informal work is truly significant.

[15] However, in the case of Haitians, after the terrible earthquake in the year 2010, it has been noted that the National Migration Office has considered this situation when granting residencies, the majority for humanitarian reasons, although cases of refusal at the border or difficulties in access to residency have been detected.

[16] Of the processes that were successful, some 5,200 culminated in temporary residencies and their renewal (that is, that the same person received two or more successive temporary residencies), and some 7,200 in permanent residencies, the majority based on a relationship to an Argentine (partner, child, father/mother).

Argentine person. There is also one documented case of a woman's permanent residency being revoked on suspicion of marriage fraud.

26. The visa requirement for Dominicans has increased the number of border crossings without authorized entry (in addition to making the journey more costly, uncertain and risky) and making regularization even harder. This is compounded by the numerous deportation orders ruled against such people by migration authorities and the recent revocation of residencies. In this context of vulnerability due to "forced irregularity," it is not surprising that there are a significant number of Dominican women working in the sex trade. Lack of documentation, the hyper-sexualization of women of African descent, prejudice and stigma highly restrict their employment opportunities and turn the sex trade into (nearly) the only option available to them – without any need for deceit, coercion or threats from third parties.

27. Claims of **fraudulent marriage** have affected not only persons of Dominican origin, but people from India, Nigeria, Senegal, China and Bangladesh have also had similar problems in this regard. In fact, at least one hundred persons of these nationalities contracted marriage with Argentine citizens in recent years; nevertheless, the National Migration Office has rejected their petitions for permanent residency based on those marriages. Without ignoring the other civil effects of the act of matrimony, the National Migration Office has argued that these were "fraudulent marriages" or "on paper only," declaring them ineligible under the migration law (which recognizes marriage as a criteria for residency – Law 25.871, Art. 22, and Decree 616/2010, Art. 22).

28. Another flaw in the application of the Migration Law and its Regulatory Decree is associated with cases of **Residency for Study or for Work** – regularization criteria that affect migrant persons from outside the MERCOSUR in particular. Basically, for any procedure in which a physical person or legal entity registered in Argentina requires that a foreign person enter the country – even for short periods or for business reasons – this physical person or legal entity must be registered with the National Registry of Single Foreign Applicants (Registro Nacional Único de Requirentes de Extranjero (RENURE).[17] The registration is required for educational establishments as a prerequisite for foreign students to gain access to residency (Article 23j).[18] It is likewise required for employers (individuals or companies) who intend to hire persons as "migrant workers" (Article 23a).

29. **The main problem lies in the bureaucratic complexities established by the RENURE that clearly limit access to migratory regularization and the rights to education and employment:** A) First, the process can take an average of three months – an excessive amount of time that can lead the employer to lose his or her original motivation to hire the person; B) The requirements are usually overwhelming, involving matters that are already required by other public bodies;[19] C) an annual registration renewal is required, making it factually impossible for public education institutions (that depend on internal procedures for the approval of registration and subsequent renewal) or employers to renew registration. D) It bears mentioning that there is no basis for the registration requirement for public education establishments, which presumably is acting within the framework of the law. Likewise, individual employers (e.g. people who employ a migrant in domestic work) rarely want to jump through the bureaucratic hoops required annually to sustain an employment relationship, thus preferring a non-registered employee or hiring a different worker [each year]. **All this tension always ends up going against the rights of people who are unable to regularize their migration status because of a supposed fault they themselves did not commit.**

[17] The goal of this registry, according to Provisions 56.647/2005 and 54.168/2008, issued by the National Migration Office, is to "provide speed and security to processes related to authorizations to enter the country requested for foreigners."

[18] In this case, they must be enrolled both in public educational centers—schools, secondary schools, universities—and in private educational centers of any kind.

[19] Some of the requirements are: accrediting legal identity, legal domicile, special domicile, legally registered status or social contract, accrediting the most recent designation by authorities, proof of enrollment in the Tax System of the Federal Administration of Public Revenue (AFIP according to its acronym in Spanish), income taxes, VAT and National Pension System, proof of enrollment in Gross Income, etc.

30. Finally, another limitation on regularization has arisen with the increase in immigration rates of between 100-500% in 2016 (Annex 15).[20] This increase affected the possibilities of regularization for the poorest families, who are exposed to the greatest situations of exploitation and marginalization.

Questions

1. Why does the category of self-employment continue to be excluded from regularization criteria if it is a form of work legitimately accepted by the State and has already been highlighted in the final observations of the Committee on Migrant Workers and Their Families in 2011?
2. What positive measures are being taken by the State to guarantee the regularization of persons who reside in the country – particularly in the case of non-MERCOSUR persons – who have for some time been unable to benefit from the regularization plans set forth?
3. What is the justification for denying the validity of a legally issued marriage certificate, if no crime is presumed or proven, nor grounds for annulment provided under criminal law?

Recommendations

1. To adopt a mechanism for migratory regularization for the category of self-employed migrant workers
2. The State should ensure that lack of RENURE registration not be an impediment to migratory regularization, much less should the lack of this registration be grounds for revocation of rights already obtained, nor should bureaucratic paperwork induce migratory and employment irregularity.
3. If there is no presumption of crime or breach of civil law regarding matrimony, it is recommended that [the State] desist from denying the validity of legally issued marriage certificates, and thus desist from denying residency on the grounds of fraudulent marriage in such cases.

IV. Grounds for denying regularization. Restrictive interpretation of the law (CERD Articles 2 and 5 and paragraph 6 on list of issues)

31. Another situation that continues to come up with regard to the application of Law 25.871 is **the restrictive interpretation of the grounds for denying regularization**, such as the supposed lack of proof of **"an authorized entry."**[21] This irregular entry in some cases has been taken as the exclusive criteria for automatic denial of residency or for issuing expulsion orders, with no consideration for having a family, work, roots or other criteria for regularization, such as humanitarian reasons.

32. The Migration Office also requires entry certification generated from its own information system as proof of entry into the country, or otherwise requires migrants to possess a certificate of entry; but at some border posts there is no computer system to register entries or they are not recorded efficiently, nor is there a unified registration system. In these situations, the burden of proof of legal entry into the country is inverted; it is the migrant who must prove it, when it should be the State's duty given that some situations render it impossible to prove.

33. In the same sense, authorities are applying automatically the law's provisions for denying entry or regularization when the migrant has a **"criminal record"**[22]. In these cases, expulsion, especially at border rejections, is ordered without any formal or adequate channels to contest or prove legitimate interest in residing in Argentina, as stipulated in Article 61 of the Migration

[20] The increase in migration taxes can be found in the table at the following link. http://www.migraciones.gov.ar/accesible/indexP.php?noticia=3224.

[21] This impediment is set forth in Subsection i of Article 29 of Law 25.871: "The following shall impede entry and stay by foreigners in the National Territory: (…) attempting to enter or having entered the national territory avoiding migration control or at a place or time not enabled to that effect (…)With prior intervention by the Ministry of the Interior, the National Migration Office may, exceptionally, for humanitarian or family reunification reasons, admit foreigners considered in the present article into the country in the categories of permanent or temporary residents by means of a resolution founded in each particular case."

[22] This impediment is set forth in Subsection c of Article 29 of 25.871: "Having been sentenced or currently serving a sentence, in Argentina or abroad, or having a criminal record for trafficking arms, persons, narcotics, or for money laundering or investing in illicit activities, or a crime that merits the deprivation of liberty for three (3) or more years in Argentine legislation."

Law. Moreover, this restriction is applied without any consideration as to the crime committed or roots and family ties. With regard to the sanctioning of crimes attributed to foreigners, the migration authority has yet to apply Article 29 of Decree 616/2010 (Migration Regulation), which provides that expulsion can only be applied in cases with a final criminal judgment; however, expulsion orders are issued for persons merely under criminal investigation who have roots and family ties in the country.

V. The adoption of new regulations that limit or contradict the Migration Law (CERD Articles 2 and 5 and paragraph 7 on list of issues)

34. The **New Criminal Procedure Code (CPPN)** was approved on December 4, 2014. At that time, a specific suspension of trial (probation) measure was passed for foreigners in **Article 35**.[23] Only people with regular migration status caught in the act of a crime (*in fragrancia delicto*) with a sentence of less than three (3) years have the option to choose expulsion instead of their sentence.[24] Therefore, a person with irregular migration status faces the dilemma of submitting to a criminal trial and likely pre-trial detention (considering the lack of roots), or if convicted and having served time, to then be deported in accordance with the Migration Law, or submit to suspension of trial and be deported for up to 15 years. **In either of these scenarios, the person is deported from the country. Article 35 of the CPPN includes an alarming distinction between cases of regular and irregular immigrants, when in fact the Migration Law had eliminated the negative consequences associated with migratory irregularity on migrant persons.** Furthermore, the burden of proof is actually inverted and placed upon the migrant person, who must prove his or her migration status. We, along with 52 other organizations, have expressed our opposition to this legal modification.

35. Another situation that legitimized exclusions and rejections at the border was **Provision 4362/2014, known as the "pseudo tourism" or "false tourism" provision** that establishes "the procedure for resolving on cases regarding suspicion on grounds within the tourism sub-category," arguing that "the normative framework should be updated and effective guidelines put in place for personnel in charge of migration control of foreigners entering and exiting the country." Even though that resolution contradicts Migration Law 25.871, the Argentine Constitution and international treaties, it has lately been invoked to legitimize restrictions on entry and residency for different migrant communities, with the greatest repercussions on Colombians, who are stigmatized in the media as presumable drug traffickers.[25]

36. It is our belief that this Provision **constitutes a setback in Argentine migration policy in that it creates new punishable offenses that do not exist under the Migration Law, and for containing rules that promote the discretionary application of regulations by migration agents**. Furthermore, it is important to add that this new provision is practically the same as the repealed DNM Resolution No. 1089 from 1985; and which, despite having been tactically repealed by Migration Law 25.871 and its regulatory decree 616/2010, continued to be applied counter to the spirit of the new law.

[23] Although the CPPN is not yet in force, the very inclusion of a discriminatory regulation which contradicts the standards of equality before the law is of concern.

[24] According to the regulation, this measure may be applied when the person "has been caught in flagrante delicto in accordance with Article 184 of this Code, which sets forth a sentence of deprivation of liberty during a period of no less than THREE (3) years in prison. Application of the process set forth in this article implies deportation from the national territory as long as such action does not violate the right to family reunification. Judicially ordered deportation includes, without exception, prohibition of reentry during no less than FIVE (5) years and no more than FIFTEEN (15) years. [...] Foreigners with a regular status may request application of a rule of conduct in the country."

[25] See the article in the newspaper El País from December 7, 2014: http://www.elpais.com.co/elpais/internacional/noticias/preocupante-estigmatizacion-colombianos-argentina. See also the article from the newspaper El Espectador from October 29, 2014: http://www.elespectador.com/noticias/elmundo/argentina-infestada-de-delincuentes-colombianos-articulo-524951

Questions

1. What measures has the State taken to repeal and change regulations contrary to human rights that affect the migrant population with regard to rejection at the border based on provisions like the "pseudo tourism" clause and those that have to do with the double incrimination of migrant persons established in Article 35 of the Criminal Procedure Code?

Recommendations

1. Repeal domestic laws or provisions that restrict or pose obstacles to migrant rights. In particular, provisions that limit in a discriminatory fashion access to entry and residency in the country. Repeal the DNM provision that establishes the "false tourist" clause and Article 35 of the Argentine Criminal Procedure Code, which contributes to the criminalization of and discrimination against migrant persons.

VI. Stigmatization, xenophobia and discrimination in the mass media. The construction of stigmatizing, xenophobic rhetoric by public authorities. (CERD Article 4 and paragraph 14 on list of issues)

37. There have been several resurgences of xenophobia in recent years, in which the proliferation of xenophobic discourse by State representatives is of particular concern in light of the State's obligation with regard to the prohibition and prevention of discrimination. First, some state officials have made distinct statements to the media in discourse implying that migrants are *"responsible for the drug trafficking in the country"*[26] or people who *"come to sell counterfeit (illegal) merchandise;"*[27] or even that *"migrants come in general to commit crime in Argentina"* or with statements like: "*How much more misery can Argentina handle taking in so many poor immigrants?"*[28] In particular we are concerned that this kind of rhetoric is directed at specific groups of migrants, such as those from countries like China, Colombia, Peru, the Dominican Republic and Senegal. Various UN organizations have alerted the Argentine State of the need to combat these kinds of practices; indeed, in 2011 the Committee for the Protection of the Rights of All Migrant Workers and their Families had recommended to the country that it *"adopt proactive measures to eliminate discriminatory stereotypes about migrant workers and members of their families, in political discourse as well as in the media, by strictly applying the criminal law provisions and sensitizing law enforcement officials, politicians, journalists and the general public on the discriminatory nature of such acts."*

38. **What is dangerous is not only the construction of the stereotype itself, but that these statements initiate changes in practices by authorities, in state institutions or even in modifications to the regulations in force that may limit the rights of migrant persons.** Examples of this are the "false tourist" provision and the modification to the Criminal Procedure Code, presented in Section V, that were passed after a public statement by the former Secretary of National Security that Argentina *"is infected with foreign criminals."*[29]

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[26]See the following press release with statements by Frente para la Victoria party National Senator Miguel Picchetto on August 3, 2016: http://www.clarin.com/politica/Pichetto-vez-preocupado-inmigrantes_0_1625237573.html. See also the press release from May 8, 2014: http://www.lanacion.com.ar/1688707-miguel-pichetto.

[27] See the press release with statements by Frente para la Victoria party National Senator Miguel Picchetto. See the video interview on the program La Mirada from October 31, 2016 with statements by the National Senator representative after minute 13.00: https://www.youtube.com/watch?v=tM3ykFIAXpc; See press release with statements by Frente para la Victoria party National Senator Miguel Picchetto in the newspaper El Clarín from November 2, 2016 http://www.clarin.com/politica/Pichetto-polemico-Cuanta-recibiendo-inmigrantes_0_1679832021.html. See the press release in the newspaper La Nación from November 2, 2016: http://www.lanacion.com.ar/1952583-las-polemicas-declaraciones-de-miguel-pichetto-sobre-los-inmigrantes. See the press release from the newspaper La Nación from May 8, 2014: http://www.lanacion.com.ar/1688707-miguel-pichetto.

[28] See the press release in the newspaper El Clarín from November 2, 2016 http://www.clarin.com/politica/Pichetto-polemico-Cuanta-recibiendo-inmigrantes_0_1679832021.html. See the press release in the newspaper La Nación from November 2, 2016: http://www.lanacion.com.ar/1952583-las-polemicas-declaraciones-de-miguel-pichetto-sobre-los-inmigrantes. See the press release in the newspaper La Nación from May 8, 2014: http://www.lanacion.com.ar/1688707-miguel-pichetto.

[29]See the press release from the newspaper La Nación dated October 29, 2014 http://www.lanacion.com.ar/1739541-berni-otra-vez-duro-contra-los-extranjeros

39. We are equally concerned about the role played by the media in instilling social discrimination and xenophobia; they have been singled out and alerted on numerous occasions with regard to their role in propagating prejudice, stereotypes and discriminatory discourse about foreign persons. Their insistence on highlighting people's nationality (as if that explained facts or conduct), the use of terms like "illegals" or "clandestine", or the association of nationality with crime ("the Chinese mafia," "Colombian narco terrorism," "Dominican criminals") have generated unrest and complaints.

40. According to data from the Public Ombudsman's Office,[30] which provides protection against discrimination in the audiovisual media, for the period 2013-2015, out of 41,932 news stories, there were 120 on themes related to migrants, 77 of which were in the national arena. Of those 77 stories, 63 were associated with police action (81.8%). In addition, it is worth noting that the migrants involved in the events figured among the sources of information in only six of those 63 stories.[31]

41. Furthermore, based on both the monitoring done as well as the complaints received by the Ombudsman's Office, it can be asserted that: a) In general, migrants are portrayed by the media as persons without rights, without recognition of their equal membership in political, cultural, economic and social life; b) it is a recurring theme that references to migrants make them out as part of some removed and threatening otherness, separate from society; this goes against the necessary promotion of inclusive images, discourse and rationale that avoids, precisely, discriminatory classifications and/or "folklorizes" people as if they were social outliers; c) in line with the aforementioned, the media do not promote or publicize Migration Law 25.871, thus contributing to an absence of media discourse to reinforce the fact that migration is a human right in Argentina; d) in addition to this concealment of rights, there is the systematic incorrect use of "illegality" in reference to migrant persons with irregular migratory status, which blindly disregards the fact that migratory irregularity is an administrative issue and not a crime. At the representational level, e) the rhetoric makes and promotes stigmatizations inherent to the idea of national, social, ethnic and/or racial superiority, the falseness of which is concealed; f) one of the classic ways in which these practices can be identified is the allusion to phenotypes or the generalization of national categories as a way of referring to migrant persons; g) another recurrent practice is the criminalization, policing, victimization and infantilization of foreigners, which leads to discriminatory sentiments; this last point is in turn highlighted in h) the nearly total absence of migrant interaction in the media: neither migrants nor their organizations appear as sources or expositors of information.

42. Because the media plays a central role when it comes to promoting narratives and comprehension, in the case of migrant persons and migration processes it is essential that their treatment as a "problem" and their perception as a "threat" be discouraged. Discrimination in language and the construction of stereotypical images form part of the mechanisms of social exclusion and affect the full exercise of these people's rights.

[30] Law 26.522 on Audiovisual Media Services (LSCA for its acronym in Spanish) set forth that the Public Ombudsman's Office, which is an autonomous entity that must provide reports and submit to controls by the National Congress, has the capacity for recommendation, but not for punishment. Among other functions, it receives and channels complaints filed by the public. It acts as a liaison between audiences and the media, program producers, advertisers, state agencies, and the public. The Ombudsman's Office seeks to create profound changes in media practices through mechanisms of reparations for rights. To this end, it creates training materials, teaches courses for journalists, broadcasts statements with specific recommendations for approaching cases that generally show violations of rights, and, with a participative method, creates guides for respectful treatment of various topics. This body has noted a set of issues that affect migrant persons by deepening patterns of discrimination that exist in society. The analysis is based on complaints received and annual monitoring of Broadcast Station News Programs in the Autonomous City of Buenos Aires. The goal of monitoring is to determine what makes the news for news programs.

[31] Five of these cases dealt with Senegalese migrant persons who took advantage of this space to file complaints of robbery of belongings during confiscation, while they were treated as criminals.

Questions

1. What measures has the State adopted to comply with the recommendation from the Committee for Migrant Workers and their Families on the need to eliminate discriminatory stereotypes from political statements and in the mass media?

Recommendations

1. To promote the creation of conduct directives in the media to prevent xenophobia and eradicate stereotypes. To also foster the strengthening of the Public Ombudsman's Office for Audiovisual Communication Services.
2. The Committee is concerned over xenophobic and racist pronouncements by public officials and politicians, their consequences and reproduction in the media. It is for this reason that the State must sensitize its officials with regard to their responsibility in the prevention of xenophobic and discriminatory acts.

VII. Institutional Racism. When discrimination, xenophobia and racism kill (CERD Articles 5 and 6 and paragraph 28 on list of issues)

VII.1. Role of Security Forces (CERD Article 5 and paragraph 28 on list of issues)

43. We have revealed a few cases where the Metropolitan Police and Argentine Federal Police have detained migrant persons on the street for identity checks based on racial profiling. This situation is happening with greater frequency after the city of Buenos Aires Superior Court of Justice (TSJ, according to its initials in Spanish) in 2015 revoked the verdict that declared null and void the detention due to an identity check subjected upon Lucas Abel Vera.[32] In its resolution, the TSJ supported the Argentine Federal Police randomly stopping people for purposes of identification, without any suspicion of crime as required by the regulations in force.[33] The suppression of objective limits on the exercise of police powers and their resulting expansion facilitates police action being guided by discriminatory criteria and deployed for purposes of "population control." This translates into detention practices on people in areas identified as "conflictive", discriminating against migrant persons on the basis of their appearance. In this sense, it should be noted that in recent months, detentions for identity checks without grounds for suspicion have had a greater impact on trans and transvestite migrant communities and on persons of Senegalese and Dominican origin.

44. There has been a documented increase in police persecution based on racial profiling combined with transphobia recently. Figures from the City of Buenos Aires Ministry of Public Defense, reporting in the case of District (Comuna) 1[34] for 2015, show that out of a total 805 sex trade violations, 543 were brought against "male Peruvians" working the streets, in disregard of their self-perceived gender identity. In the past three years there have also been 5000 violations written up for sex trafficking, although none have ended in sentences. What this situation makes clear is that **transgender and transvestite migrants are the victims of a process of criminalization by the police**, regardless of the fact that they are not committing a punishable act, and therefore their persecution is not justified and highlights disproportionate and selective action by the police based on racial profiling.

45. This use of racial, transphobic profiling can also be seen in the city of La Plata in the Zambrano case.[35] On September 4, 2016, 25 Peruvian and Ecuadoran transgender and transvestite women were detained in the early morning hours in a police raid said to be a "an operation against transvestite drug-traffickers." Nine of them were taken to the 9th police precinct, four of whom were held for over a week even though only one was found to have less than 1 gr of hallucinogens hidden in her

[32] See the press release on the ruling on January 7, 2016: http://www.pagina12.com.ar/diario/sociedad/3-289742-2016-01-07.html

[33] Law 23.950/91 modifying Article 5, Subsection 1 of the Organic Law of the Argentine Federal Police (PFA for its acronym in Spanish) (Law-Decree 333/58).

[34] The majority of cases for supply and demand of sex in in public ways are initiated in District (Comuna) 1, which includes the neighborhoods of Constitucion, San Telmo, San Nicolas, Puerto Madero, and Retiro.

[35] The Zambrano ruling has been included in the Report presented to the CEDAW in October 2016 by CELS and other trans and transvestite organizations. See link: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ARG/INT_CEDAW_NGO_ARG_25486_S.pdf

underwear. On September 12, the La Plata Appeals Court dismissed the police procedure calling it "utterly outrageous." The Zambrano ruling – historic for the community – bears witness to police action that criminalizes and persecutes transgender and transvestite migrants, and recognizes basic rights that are not respected by either the police or the justice system.

46. In the case of **persons of Senegalese origin**, the most common means of survival is through street vending, because they cannot find work in other sectors of the economy. They are typically **persecuted, harassed and humiliated on a daily basis by police**. The Buenos Aires Ministry of Public Defense has warned of the systematic nature of this persecution when these people try to sell merchandise on the street. Because the police use racial profiling to write up violations of "unauthorized street vending," these claims are often dismissed by judges for lack of merit. In 2013, the Prosecutor General's Office created the Complex Investigation Coordinating Unit (Unidad Coordinadora de Investigaciones Complejas), which currently intervenes in investigations of street vending by ordering **sudden raids of the homes of Senegalese persons, confiscating their merchandise and personal items, the majority of which are never recovered**.

47. When migrant persons intend to work for themselves, they also run into many complications in the way of starting a business, since landlords charge excessive sums and abusively increase rent. These cases can be tracked throughout the country, but most recently in the Constitución area of Buenos Aires there was a situation involving a huge community of migrants who became the victims of speculation by private owners, when the **"Paseo la Estación" shopping gallery** was arbitrarily closed by the firm CRIZELL S.A. on August 14, 2016, leaving some 450 families without work to support themselves. The premises were then re-opened on September 11, but with the express prohibition blocking entry to some 30 people, all of them migrants, who had in previous days set up a tent on a street close to the site as a form of peaceful protest. When these vendors tried to go back to their locales, **the police staged an operation that ended in repression and detention of several people**. Those 30 migrant vendors lost their locales in the shopping center, in addition to their merchandise, papers and documentation. The justice system has initiated inquiries with no results for now. But the survival of these people and their families has been curtailed by the action of private parties with the collusion of the police, and a justice system that has not ruled any action in defense of their rights as workers.[36]

48. Another of the most notorious cases in the city of Buenos Aires[37] happened in the context of the housing crisis, to which thousands of city residents are exposed, in the dispute in the **Parque Indoamericano** in 2010. On that occasion, some 1,500 families (some of them migrants from bordering countries) occupied the park to claim their right to decent housing. When a local judge, at the request of the Buenos Aires city government, gave the order to evict, the Federal Police intervened jointly with the Metropolitan Police, leaving two immigrants dead and another five wounded. The mayor of the city of Buenos Aires at the time – now President of Argentina – made stigmatizing remarks about migrants. The families of the Indoamericano victims, more than five years after the events, have still not had justice. While the investigation remains open, it has not advanced accordingly and there is a high risk that impunity will rule the day in this case.

49. After 20 years, the Argentina justice system has not reached a decision in the death of leader **José Delfín Acosta Martínez**, who was arrested and murdered by police on April 5, 1996; after intervening in defense of the human rights of two Brazilians of African descent, he was arrested and tortured inside Buenos Aires' fifth precinct. After having exhausted all internal judicial instances, the case was taken to the Inter-American Commission on Human Rights in 2002 and admitted in

[36]See article at Online 911 from September 13, 2016: http://www.online-911.com/2016/09/constitucion-cuatro-detenidos-incidentes-tras-desalojo-puesteros/8

[37] In fact, in its 2011 report, the Committee for the Protection of the Rights of All Migrant Workers and their Families was aware of this situation and made the following statement: "The Committee notes the explanation given by the State delegation that the removal of the occupants of Parque Indoamericano in the City of Buenos Aires on December 7, 2010 was unrelated to the fact that some of the occupants were migrant persons, but it is seriously concerned by the murder of Bernardo Salgueiro, a 24-year-old Paraguayan man, and that of Rosemary Chura Puña, a 28-year-old Bolivian woman, during the police operation. It is also concerned that Juan Quispe, a 38-year-old Bolivian man, has been shot to death on December 9, 2010 during a violent altercation that occurred in Parque Indoamericano between residents of nearby neighborhoods and occupants of the Park. It is also of concern to the Committee that the Mayor of the City of Buenos Aires, rather than mediating the conflict, has publicly associated migrant persons with crimes, such as drug trafficking."

June 2013. In 2015, Amicable Settlement proceedings with the Argentine State began, but there has been no progress to date. The case thus remains in utter impunity.

50. In another recent case that occurred in February 2016, the Buenos Aires provincial police were deployed to the **Pasaje Los Italianos de Ciudad Evita** (La Matanza) in the outskirts of Buenos Aires, destroying more than a hundred dwellings with bulldozers, many of them belonging to migrants from the Bolivian community. **The police arrived without a court order and destroyed homes,** claiming that there was a court order for demolition of the site issued by Contentious Administrative Court No. 1; however, local residents reported that they had never received any notification. They lost their homes and any who resisted were arrested; 11 people were also called "shitty Bolivians" by local police.[38]

51. On the other hand, it is possible to find a few court decisions that have brought the struggle against discrimination by security forces to the forefront. For example, the Bara Sakho case before the Buenos Aires Superior Court (Case 6925, resolved 08/11/2010)[39] limited police abuse in the detention of Senegalese street vendors, demanding that the police ensure the right to a defense and communication in a language migrants understand, and the intervention of the Public Prosecutor's Office in controlling police detention. However, since no working group was ordered, nor any follow-up on execution of habeas corpus, the case had no real effect on the modification of practices and thus the decision did not reflect a real change in police conduct; today racism and police violence against African street vendors is still present on the streets of Buenos Aires. In summary, we must beware that racial profiling and persecution by the police against Afro-descendent and Latin American immigrants are practices that are becoming more frequent. These populations are often extorted by the police and organized crime groups to be able to sell in commercial districts in large cities or beach areas.

Questions

1. What measures is the State taking to guarantee the right to a defense and the right to be heard to migrant persons who do not speak Spanish, in trials in general and in expulsion cases specifically?
2. With regard to people of Senegalese, Dominican and Haitian origin in Argentina, what measures have been adopted to prevent discrimination against them by security forces?
3. What measures has the State adopted to prevent the persecution, criminalization and stigmatization of migrants belonging to the transgender and transvestite segments of sexual diversity?

Recommendations

1. Provide free public defenders and interpreters – in different languages – during the entire process and in any court proceedings.
2. Adopt the proper administrative and judicial measures to prevent police officials implicated in acts of discrimination from continuing in their duties on the force.
3. For the State to take the necessary measures to remedy the structural exclusion of the rights of transgender and transvestite persons, whether nationals or immigrants. To achieve this, norms must be approved to include them in the workplace, in addition to preventing, sanctioning and eradicating the institutional discrimination and violence exhibited with regard to their bodies. Not only the kind exercised by the police, but also by judges, hospitals, the education community and society in general.

[38] See the Bolivian Consulate's page dated February 24, 2016: http://www.consuladodebolivia.com.ar/2016/02/24/topadoras-balas-goma-policia-desaloja-residentes-bolivianos-ciudad-evita-la-matanza/

[39] See ruling http://www.fiscalias.gob.ar/wp-content/uploads/prev/tsj-caba-bara-sakho-senegaleses-11-8-2010.pdf and see also the article from Página 12 from August 19, 2010. http://www.pagina12.com.ar/diario/sociedad/3-151621-2010-08-19.html

V.II. Response from the judicial system with regard to cases involving migrants (CERD Articles 5 and 6 and paragraphs 26, 27 on the list of issues)

52. **The Argentine judicial system has been characterized by a high degree of impunity in investigations of crimes against migrant persons.**

53.The first case we would like to mention is a recent one that occurred in March 2016. **Massar Ba**, leader of the Senegalese community,[40] was found lying on the ground with severe wounds and an exposed pelvic fracture, apparently from a fall from a considerable height, between México and San José streets in the city of Buenos Aires. He died hours later in the hospital due to shock from loss of blood. The first person to find him on the street was a police officer, who failed in his duty to write a report with the details of the scene for the follow-up investigation, thus omitting fundamental evidence pertaining to the first hours. It is important to point out that Massar Ba had filed complaints against the metropolitan police for the persecution of Senegalese street vendors.[41] His death occurred one month after the police had evicted him from the community home where he lived; just days before, he had been protesting along with other sidewalk vendors against police persecution in the Flores neighborhood.

54. The case was classified as "death by questionable cause of injured party Massar Ba." In other words, it has yet to be determined as homicide; for this reason, the Senegalese Residents Association tried to participate in the case as a plaintiff to prevent the crime going unpunished, since Mr. Ba had no family in the country to do so. The family sent authorization from Senegal for the Association to act as plaintiff in the case. However, the court denied the petition, alleging that it is not part of an association's objective and purpose to act in this type of matter. It also argued that the association is not the affected party, because it could not prove a direct crime perpetrated against it. Despite the fact that it was the association that took care of transferring Massar Ba's body to Senegal and all the expenses incurred. In other words, the court denied the Senegalese Residents Association the possibility of seeking justice and filing suit,[42] disregarding the fact that Massar Ba had no family in the country who could do so and negating his importance as a leader in their community, even more so considering he was a human rights defender who provided support for the community and fought against police violence.

55. Another racism-related murder was committed in early 2015. **Franco Zárate,** a young Bolivian, went to buy drinks with his father, Elvis, and cousin, Aldo. Minutes later he was killed by storeowner Pelagio Guadalverto Ximénez after trying to charge them more money for the drinks because they were Bolivian. When they complained and exchanged insults, he showed them a weapon, trying to intimidate them. When the two younger men tried to leave the place, Pelagio hit Franco and put a bullet in his chest, killing him. While the family was at the hospital, the presumable murderer went to Precinct 42 to report a robbery. Later, when Franco's father and cousin went to report the crime, they were immediately arrested and threatened. At present, more than a year later, the wheels of justice have not moved forward with the investigation or cleared up the facts.[43]

56. Other cases with little visibility that we have been able to track down in the newspapers are the deaths of transgender persons. One recent case that affected the migrant community happened in February 2016, when the body of **La José Salazar**,[44] a 34-yr-old Peruvian, was found in Florencia Varela in the southern suburbs of Buenos Aires. She was found with her skull crushed, her back broken and knife cuts all over her face. The prosecutor's investigation includes a hypothesis as to

[40]See the press release in Cosecha Roja dated March 11, 2016: http://cosecharoja.org/aparecio-muerto-un-referente-de-la-comunidad-senegalesa-en-argentina/**.** See also the video on Crónica Televisión dated March 13, 2016: https://www.youtube.com/watch?v=s7UdgtXwGTQ&feature=share**.**

[41]See the article in Página 12 dated March 12, 2016: http://www.pagina12.com.ar/diario/sociedad/3-294418-2016-03-12.html

Through action 00982/16 NN. doubtful death of Massa Ba, the Court denies the complaint.

[43]See two press releases with different viewpoints on the murder of Franco Zárate, the first in a small local newspaper, notas.org: https://notas.org.ar/2015/01/30/franco-zarate-asesinato-racismo/ and the second in one of the country's leading newspapers, El Clarín: http://www.clarin.com/policiales/Mataderos-confusa-muerte-joven_0_1293470680.html

[44]See the press release in the newspaper Crónica dated February 23, 2016: http://www.cronica.com.ar/article/details/55240/travesti-peruano-aparecio-masacrado-en-la-calle

the existence of a "gang of homophobic men" in the area, but there has been little progress to identify the individual actors. To be poor, a migrant and belong to the LGBTIQ community offers a full combo of discrimination ending in social exclusion and death.

57. Another recent case of racism and xenophobia happened in October 2015 when **"Malú"**, a Haitian refugee, was directly attacked at her home in a settlement in the suburb of Moreno in the province of Buenos Aires. Malú had left her house and her mother had stayed behind; a few hours later, she learned that her house had been burned for belonging to a *negra de mierda* (fucking black), as her neighbors called her. The place smelled of fuel, and the attackers clearly thought the family was at home because the music was on. Her mother managed to save herself by just minutes when she stepped out to do the shopping. Malú, her daughter and mother lost everything. When she tried to report the incident to the police, they would not listen; she then had to resort to other judicial authorities in the Moreno jurisdiction, who begrudgingly took a partial statement from her. Malú is a leader in the Haitian community and participates in activities with the *Red de Migrantes* (Migrant Network), so she did have access to support and was able to request an expansion of the complaint in order for all the details of the event involving the fire to be recorded. Nevertheless, her complaint has still not gone forward. But she, her mother and daughter had to leave their home and relocate to another place for fear of the threats against her life and safety.

58. We must likewise remember the ten years of impunity[45] in the case of the **textile factory on Luis Viale Street**, where five children (Harry, Luis, Rodrigo, Elias and Wilfredo) under the age of 15 died, along with Juana, 25 and pregnant, all Bolivians. The fire occurred in just one of numerous sweatshops operating in the city of Buenos Aires. The trial got started on April 18, 2016, ten years later, and while important acknowledgements were made about reduction to servitude and the shop owners were sentenced to 13 years in prison, shop machinery seized and ownership of the shop turned over to the justice system, it was only after 10 years of trial that an investigation of police, inspectors and the owners of the Fischberg and Geiler brands was requested. This decision shows that the justice system can run better investigations and apply sanctions with more of an impact on the structural causes of the labor exploitation of migrant persons.

59. In a more recent event that occurred in April 2015 in the Flores neighborhood of Buenos Aires, two Bolivian children[46] died in a sweatshop. The **Páez case** is advancing slowing, just like the trial for the one on Luis Viale street; it is essential that justice be effective and swift to sanction these types of cases in order for them not to be repeated.

60. Two cases bear witness to the fact that **agents of the justice system itself act with discrimination in Argentina:**

61. In May 2016, the Buenos Aires province courts sentenced **Claudia Córdoba** – a transgender woman of Peruvian nationality – aggravating her sentence because she was a migrant. Furthermore, the ruling validated denigrating practices (forced nudity) that bear witness to reiterated police action, rights violation and that the justice system should have rejected as invalid procedures. The judicial resolution was made by a single magistrate in Criminal Court No. 1 of La Plata. The case file and ruling at all times refer to the accused, who identifies as female, with her male name and in masculine terms. After an extensive analysis of the differences our Constitution would make between Argentines and foreigners, the magistrate asserted that the State holds fewer obligations with migrants than it does with Argentine nationals.[47]

62. Another case bearing witness to gender violence, racism and social exclusion of the migrant community was the trial of **Reina Maraz Bejarano**,[48] a woman from an indigenous group native to Bolivia and speaker of Quechua. She was arrested for the murder of her husband, Limbert Santos, in November 2010. She spent seven months in police custody while pregnant, was not given any pre-natal check-ups and was then transferred to a penitentiary, where she gave birth to a daughter. Reina spent three years there in a context of racism and institutional violence, being submitted to humiliating, cruel and degrading

[45] See the article in Página 12 dated April 18, 2016: http://www.pagina12.com.ar/diario/sociedad/3-297220-2016-04-18.html

[46] See the article in Página 12 dated April 28, 2015: http://www.pagina12.com.ar/diario/sociedad/3-271542-2015-04-28.html

[47] Paragraph taken from the joint report prepared by CELS along with various trans and transvestite organizations regarding fulfillment of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); October 23, 2016.

[48] See the press release on the sentencing of Reina Marazhttp://www.pagina12.com.ar/diario/sociedad/3-258611-2014-10-29.html and another press release on the sentencing of Reina Maraz on October 29, 2014 http://cosecharoja.org/prision-perpetua-para-la-mujer-quechua-que-estaba-presa-y-no-sabia-castellano/

treatment. She was not given an interpreter, since the official register only listed translators of English, Portuguese and French, but none for indigenous languages. For this reason, she never had the possibility of telling her version of the events at key moments in the process. That version involved a series of episodes of gender violence by her husband, who had beaten her unconscious and even nearly killed her; she was the victim of repeated sexual abuse as payback for her debts to her husband. **The only time she had an interpreter was when she was informed of the severity of her crime and given notification of her life sentencing in November 2014.** The decision was based on the youngest son's statement in the Gesell Court, which was later criticized for having been taken by an unfit professional and because the son's responses were induced. Despite the fact that a review of the decision was achieved and Reina is serving out her sentence under house arrest, the problem now is that her electronic ankle ID bracelet does not allow her to move freely about her house; in fact, the short range does not allow her to go to the bathroom. Her health has thus been compromised. Currently, her sentence is under review, whereby different organizations and State institutions have submitted that her sentence should be overturned because it violated due process and the right to a defense.

Questions

1. What measures has the State taken to train public officials, and the judicial branch in particular, in the contents of Law 25.871 and its Regulatory Decree 616/2010 to thus avoid xenophobic and discriminatory actions and court decisions?

Recommendations

1. To investigate and sanction, in a reasonable timeframe, anyone who has committed crimes against migrant persons.

VI. Access to work, social security, housing and education without discrimination (CERD Articles 2 and 5)

63. As we have said, while the country has advanced from a legal standpoint with regard to respecting migrant rights, the greatest obstacles we perceive at present lie in the enforcement of their economic, social and cultural rights and in the persistence of discriminatory regulations on this matter.

VI.1. Decent work

64. Some of the limitations on regularization end up determining the type of work chosen by many migrants, who frequently do the worst paid jobs, such as the textile industry; domestic work; construction or rural planting and harvesting – some of the few activities in which they can work, since they are rejected for other jobs due to their ethnic or racial origins. These labor sectors are de-regulated or outsourced in Argentina, a huge problem when it comes to immigrant labor exploitation. This labor outsourcing masks the responsibility held by large corporations and brands that take advantage of precarious migrant labor, reaping scandalous earnings.[49] Migratory irregularity fosters the risk of labor exploitation.

65. Migrant workers frequently live and/or work with their children in the same factories. These people are often submitted to over 16-hour workdays; they have little possibility of social or labor mobility; their working conditions are utterly precarious and even put their lives in danger. At the same time, their salaries consist mostly of arrangements at the discretion of their employers, since they have little bargaining power, jeopardizing their economic and basic needs.[50]

[49]Regarding the distribution of earnings in this economic activity, a 2010 study stated that only 1.8% of the value of the sale of clothing represented the amount paid to the worker in salary, although, in the case of tailoring, the workers provide 60% of the value added, Barattini, Mariana (2010), Trabajo esclavo y organización: el caso de la Unión de Trabajadores Costureros en Argentina, en Estudios Demográficos y Urbanos, Vol. 25, No. 2 (74) (May-August), pp. 461-481.

[50]Victoria Basualdo, Alejandra Esponda; Guillermo Gianibelli, and Diego Morales (2015). "La tercerización laboral en la Argentina actual: marco legal, estrategias empresariales y respuestas de los trabajadores" Siglo XXI Editores.

66. Another of the limitations to getting a decent job is the excess number of requirements, time and money needed to validate a degree [from elsewhere]. Professionals who choose to live and work in Argentina are limited in their right to freely exercise their chosen profession due to the excessive number of requirements imposed by the Ministry of Education when it comes to validating degrees; despite the existence of a countless number of agreements with countries in the region, local bureaucracies continue to hinder immigrants with professions from exercising them.[51]

VI. 2. Housing

67. Renting an apartment or house in any part of the country, even more so in the city of Buenos Aires, requires a countless number of requirements, to which real estate speculation must also be added. Local landlords do not want to rent to foreigners, and discrimination in terms of access to housing can be seen even in the most precarious dwellings, where one can often find notices saying "we do not rent to foreigners." The combination of all these factors is that the majority of migrants live in irregular settlements, with dreadful sanitary conditions and are victims of pollution. They are likewise restricted from subsidized plans and housing and severely limited in terms of access to loans for social housing. One of the concrete limits currently is that sanctions are being established for people who provide housing to undocumented migrants for profit. It is for these reasons that the exercise of the right to housing and decent habitat is even more limited for migrant persons than it is for Argentine nationals.

VI. 3. Health

68. In the case of the right to health, Article 8 of Law 25.871 explicitly recognizes the right of every migrant person to receive medical care, regardless of his or her migratory status. Nonetheless, there are many reports that doctor's offices have denied appointments to migrants for not having a DNI (Argentine National ID), or that phone or online appointment systems require this information in order to proceed with the booking. There have even been cases of discretional conduct in which health establishments give priority to Argentine nationals over migrants, disregarding order of arrival or whether these patients have more complex health issues.

69. In the same sense, while it is true that there are health establishments that work on a daily basis with the migrant population because their hospitals or care centers are located in areas with high migrant population density, there are still reports of administrative personnel and healthcare teams being discriminatory and xenophobic. This is known colloquially as "check-in window discrimination," meaning ill treatment, refusal to refer the person to the proper care area, or any other administrative/medical practice that puts the migrant's health at risk. What is evident here is that, in addition to failure to comply with the right to health, it is the failure by public officials to provide information, in the venues where migrants exercise their rights (hospitals, schools, courts, etc.), on the procedures for regularizing their migratory status (if irregular) and their rights and obligations as migrant persons in Argentina. When it comes to this situation, ill intent or deliberate discrimination are not always evident, since these practices are often sustained through institutionalized, normalized discrimination resulting from a lack of education and profound disregard for the migration law.

VI. 4. Education

70. Law 25.871, Article 6 establishes that the State shall ensure, in all its jurisdictions, equal access by migrants and their families to health and education, among other rights, under the same conditions of protection and refuge provided to Argentine citizens. Nevertheless, in some cases, discrimination in access to schools results from the requirement of an Argentine DNI for children to be enrolled as students, to register for exams or when requesting the issuance of a diploma. Another type of obstacle in access to education is related to the accreditation of diplomas, or recognition of studies done in

[51] Some of the most affected groups are Colombians, Ecuadorans, and Venezuelans from the health sector who hope to specialize in their fields in the country. Likewise, persons from non-MERCOSUR countries encounter great difficulties in validating even their primary, secondary, and tertiary degrees.

other countries by migrant children and adolescents, which particularly affects asylum seekers. Furthermore, access to education plans is also restricted. [52]

71. The children of immigrants are often the victims of bullying and other related forms of discrimination in schools. Many of these children and teens are Argentines who have come from other provinces in the country, or who were born in the country to migrant parents and have physical traits associated with a different ethnic or racial origin. Children with "non-white" physical or racial features experience anguish and stress because of bullying from other classmates; the terms *negro de mierda*, *bolita* (Bolivian epithets), *paragua* (Paraguayan epithet) or *peruca* (Peruvian epithet) continue to be frequently used in schools all over the country, right in front of the complicit eyes of teachers, educators and administrators in general.

VI. 5. Pensions and family allowances

72. In accordance with the International Convention on the Elimination of all Forms of Racial Discrimination, we proclaim the right of all persons to effective equality of treatment under the same conditions of protection, refuge and rights with regard to social security. But the Argentine State has established a requirement of minimum ongoing residency of 40 years in order to grant non-contributory or social welfare pensions for senior citizens, and likewise, it requires a minimum of 20 years for a disability pension. In the case of mothers of seven or more children, it requires a minimum of 15 years residency[53] to quality. All of these pensions are aimed at people who are in an extreme state of social vulnerability. [54]

73. The requirement of years of residency in order to gain access to assistance pensions prevents foreigners from exercising this right. In the case of foreigners, in addition to proof of a situation of extreme vulnerability, welfare plans require them to have a minimum period of residency in the country. If one considers that these pensions are based on special conditions of vulnerability, the requirement of a certain number of years residency in the country is plainly unjustifiable and therefore discriminatory based on nationality. This type of distinction was declared unconstitutional by the National Supreme Court of Justice[55].[56]

74. In another area, in late 2009 via Decree 1602/2009, the executive branch incorporated Law 24.714 that regulates non-contributory sub-system of allowance per child that workers get for social protection. However, the regulation of this program, known as Universal Child Allowance (AUH, according to its acronym in Spanish),[57] ran into conflict with the Convention in that it makes a distinction between nationals and foreigners in their access to the universal allowance per child. Among the requirements needed to quality for the universal child allowance, the decree requires that the child be Argentine, a child of a native Argentine or by option, naturalized or have legal residency in the country for at least three years prior to the request. But in addition, the regulation provided by the National Social Security Administration (ANSES) added new requirements to Regulatory Decree 1602/09 in its resolution 393/2009, whereby ANSES added a) a requirement of three years residency not

[52] Recently, after the implementation of national programs (Connect Equality Plan or Plan Conectar Igualdad) and local programs (Plan Sarmiento) to provide netbooks for teaching and learning, different obstacles have been observed with regards to accessing portable computers, mainly the requirement of a DNI.

[53]The law demands that persons who receive these pensions may not enjoy any other provisional or non-contributory relief, must not own goods or have income or resources that allow for their subsistence, and must not have any relatives legally obligated to provide them with food, or, if they do have such relatives, they must be unable to fulfill this obligation.

[54] In previous years, both the National Secretary of Human Rights and the Public Ombudsman's Office of the Autonomous City of Buenos Aires (Matter No. 68.859, de 2007), have stated that they are in favor of reforming the regulation. However, it has not yet been modified.

[55] CSJN, sentence on September 4, 2007, "Review of leave reasoned by Luisa Aguilera Mariaca and Antonio Reyes Barja in representation of Daniela Reyes Aguilera in the case Reyes Aguilera, Daniela v. the Nation."

[56]The legal actions that have been presented from the year 2003 onward have only served to give individual responses without the possibility of effecting the necessary regulatory reform.

[57] The Universal Child Allowance (AUH) consists of a monthly non-retributive monetary provision for children and teenagers "residing in the Republic of Argentina" which shall be paid to only one of the parents, guardians, or relatives up to the third degree of consanguinity for each person under eighteen years of age within their care, or with no age limit if the child has a disability.

only for foreign parents, but for those children who were not born in the country as well, which in practice meant that a child of just two who had been born outside the country would not have access to the allowance, even if one of his or her parents had legal residency in the country, even for more than three years; and b) three years legal residency for foreign parents, even when the child was born in Argentina. In other words, this exclusion directly affects the right of children and adolescents. While the possibility exists to legally challenge the egalitarian application of this right, and for such claims to bear fruit, we nevertheless observe a lack of information with regard to the possibility to seek justice through legal channels to defend of these rights.[58]

Questions

1. What actions are being implemented so that all health centers and educational institutions in the country guarantee access to health and education to all migrants and their children, regardless of their migratory status? And what programs exist for personnel in the health care and education systems with regard to immigration and migrant rights?
2. How do we convey the subject of immigration – including contemporary migration – in school curricula at the national, provincial and local levels?
3. What measures has the State adopted to guarantee access to adequate housing for the migrant population?
4. What measures has it adopted or intend to adopt to adapt its legislation on non-contributory pensions and family allowances to meet international standards of non-discrimination regardless of nationality in terms of access to the right to social security?
5. What measures has the State taken to guarantee migrant persons' right to vote and be elected?

Recommendations

1. Educate and train public officials in local government, particularly in the health and education fields.
2. That the State adopt legislative or regulatory measures to dispense with the requirement of a minimum period of residency – a requirement that the National Supreme Court has declared unconstitutional – to have access to State social protection in situations of extreme social vulnerability.
3. Repeal the discriminatory criteria against the migrant population with regard to access to social housing.

VII. Regulatory adaptation on matters of discrimination (CERD Article 2 and paragraphs 6 and 7 on list of issues)

75. On the specific issue of xenophobia and racism, the country has Anti-Discrimination Law No. 23.592 of 1988, which provides for the possibility of obtaining cessation and redress for discriminatory acts or omissions. Likewise, the National Institute Against Discrimination, Xenophobia and Racism (INADI, according to its acronym in Spanish) was created under Law 24.515 of 1995, which reports to the Ministry of Justice and Human Rights and oversees the implementation of the National Plan Against Discrimination, approved via Decree No. 1086/2005. Even so, for years an array of bills have been under discussion to modify or replace Law 23.592 of 1988, for the purpose of adapting the legislation to normative developments in the national and international arenas. In this sense, in October 2016, the Chamber of Deputies Human Rights Commission passed a bill that, despite its limitations, expands the premises for prohibited discriminatory pretexts and incorporates important procedural tools for obtaining cessation and redress for acts of discrimination. Civil society has supported the process, so this normative change can be considered an important opportunity to combat discrimination, xenophobia and racism.

76. One of the greatest shortcomings of the National Anti-Discrimination Plan (Decree No. 1086/2005) is that when a person wants to report a discriminatory act, the burden of proof is held by the victim, which ends up hindering the course of complaints. In addition, it is important to point out that the INADI has been under investigation since 2011 when irregularities in its operations were found. The ongoing postponements in the investigation since that time have limited the body's

[58] In the case "S.A.T. c/ ANSES UDAI RIO GALLEGOS s/AMPARO LEY 16986," Resolution 393/2009 was declared unconstitutional.

independence and capacity to act, which ultimately affects its ability to function as an institution and its ability to respond to complaints. The new government extended the investigation on January 8, 2016, with no clearly defined path or estimate of when its normal operation would resume.

77. Furthermore, it bears mentioning that one year after the UN proclamation of the Decade for People of African Descent, no clear path has been established for granting "recognition, justice and development" at different levels for communities of African descendants or Africans in Argentina.

Questions

1. What actions will the State take to guarantee the functional autonomy of the INADI, under investigation since 2011?
2. What actions has the State taken to protect the victims of discrimination, xenophobia and racism?

Recommendations

1. Cease the investigation of the INADI anti-discrimination organization and facilitate its normal functioning.
2. Foster an effective mechanism for the INADI to ensure that the burden of proof is not borne by the victims of discrimination.