



**Discrimination in Argentina**  
Diagnosis and proposals

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Towards a  
 National Plan  
against  
Discrimination

# Discrimination in Argentina

Diagnosis and proposals

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It should be noted that none of the above mentioned persons is to be considered responsible for errors or opinions expressed in this report.

# INTRODUCTION

The struggle against discrimination is an old humanitarian ideal and its elimination seems an ever unattainable goal to us. Human society seems to determinedly persist in using social or physical difference as a base for hostility or marginalisation. The fact that humanity is varied, that people are born and will continue to be born in distant points of the planet with different characteristics, different skin colours and diverse aptitudes is hard to assimilate. Our societies structures and institutions do not facilitate equal integration of all human beings, nor they respect peculiarities. Moreover, they usually create their own modes of discrimination and intolerance.

The conviction that human society is enriched – in a broad sense of the term – when it seeks integration rather fragmentation (by nurturing prejudices, unfounded fears or useless competitions) is at the starting point of this *National Plan against Discrimination*. We are fostering a culture of non-discrimination. According to Kliksberg: *“The underprivileged groups have values that give them identity. When disrespected or marginalized, it can be totally harmful to their identity, blocking the best productive proposals. But when potentiated and affirmed, enormous potentialities of creative energy are triggered”*<sup>1</sup>. We share this idea and for that reason we consider that to fighting discrimination is a duty of the State and a necessary commitment of all.

The extraordinary and enriching cultural manifestation of our continent and of Argentina is fruit of centuries of population movements. In addition, our societies have suffered discriminatory attitudes and practices against many groups that are amongst our cluster identities. Discrimination due to ethnic, political, religious and economical reasons is to be found in Argentina in close relation with new modes of marginalization and intoler-

<sup>1</sup> Kliksberg, Bernardo, *Más ética, más desarrollo*, Temas, Buenos Aires, 2004, p.41

ance. Discrimination is reflected in the denial of the fundamental rights, of health care, employment, education, security, individual dignity and cultural identity. In our opinion, a society that practices discrimination and inequality is unjust and undemocratic, and loses its development and growth potential.

However, if it is accepted that discriminatory practices are product of the ways in which the processes of identity and “normalization” of each nation-State take place, it is clear that their complexity and persistence justify the elaboration of a National Plan against the Discrimination that takes under consideration the perspectives and ways of perception of the diverse groups that integrate our society. That is why the authors of this Plan decided to interview the victimized groups that – under diverse discriminatory modalities – included: specialists, knowledgeable governmental civil employees, social movements, representative organizations of civil society and human rights organizations in the whole territory. This dialogue allowed us to listen and to value their perspective on the subject of discriminatory social practices as well as their proposals (situational and strategic) for the dismantling of such practices and the matrixes that originate them.

A diagnosis on discrimination in our country was made based on the authors’ previous experience, the consultations held, the national and international research materials on the subject and the results of the interviews held since June 2003. Proposals and recommendations are included. Great efforts have been made to insure interviews with all and every group of affected people. Therefore, we apologize for any omission committed.

## **The National Plan against the Discrimination. Background and Preparation.**

### **2001-2003**

In October 2001, the former High Commissioner for Human Rights, Mrs. Mary Robinson, visited Buenos Aires with the intention of promoting the application in Argentina of the Conclusions of the International Conference against Racism, Xenophobia and other Connected Forms of Discrimination held at Durban, South Africa. A Memorandum of Understanding

was signed with the Ministry of Foreign Affairs, by which the Argentine Government assumed the commitment to prepare a National Plan against Discrimination with objectives that would agree with the Durban International Conference. It was settled therein that the Government would extend its application throughout country.

During her visit, the High Commissioner presided a seminary and made contacts all over the country, which included the former Inspector of the National Institute against Discrimination, Xenophobia and Racism (INADI), Dr. Eugenio Raul Zaffaroni. In all instances, she stressed the need of elaborating a Plan based on a wide national consultation with affected sectors, government areas, non-governmental organizations and universities, so as to assure the Plan would respond to concrete needs and not only to theoretical constructions. Support by United Nations in its preparation and execution was also suggested.

In November 2001, the first internal consultations for the preparation of the Plan began. Nevertheless, they were interrupted by the political changes produced in Argentina by the end of the same year. In May 2002, with the new Presidency of the INADI, exerted by Professor Enrique Oteiza, the Argentine commitment was reinitiated. It was due to the initiative of the Ministry of Foreign Affairs and the INADI, that a Group of Governmental Coordination integrated by these institutions plus the Secretariat of Human Rights of the Ministry of Justice and Human Rights and the Governmental Cabinet of Ministers was created. In addition, United Nations Development Program (UNDP) was invited to participate in every meeting.

Between May and October of 2002 diverse decisions regarding implementation of the Plan were adopted. Briefly put those decisions were the following:

- To create a Group of Governmental Coordination integrated by the above specified areas of Government along with UNDP participation. This Group assumed the responsibility of monitoring the preparation of the Plan and the accomplishment of the country's authorities so as to efficiently apply it;
- To prepare a Plan that would be entrusted to an Executive Coordinator and a team of independent experts under the supervision of the Group;
- The project of the National Plan would follow the conclusions of the Durban International Conference and it would be understood as the Argentine contribution to an international effort in the matter;

- Once concluded, its communication before national, provincial and municipal authorities was seen as necessary for the promotion of its implementation.

In December 2002, during the celebration of the Human Rights Day, an event with a wide participation of civil and political sectors took place at the Ministry of Foreign Affairs. In that scenario the steps undertaken for preparation of a National Plan were publicly presented. In January of 2003, in a monitoring meeting on Durban decisions, the High Commissioner, at that time Sergio Vieira de Melo, publicly distinguished three countries efforts to fulfill Durban commitments: Sweden, Norway and Argentina were mentioned.

The Group of Governmental Coordination decisions proposed a project in the following lines:

- To appoint an Executive Coordinator and a small expert team to work with common criteria and in concordance with the Durban Conference recommendations;
- To hold an ample (social and territorial) consultation with groups of victims of discrimination, non-governmental organizations, related areas of government and other social sectors. To visit all the possible areas in the country;
- To establish a less than a year long working schedule, indicating in detail those places to visit and sectors to interview;
- To submit the project to public consideration and to commit every social and political sector on its application.

Different regions of the country – under an ample regional and social scope – were proposed. Thus, it was suggested to visit the Provinces of Misiones and Formosa (Northwest of the country); Provinces of Neuquén and Río Negro (Southwest of the country); Provinces of Cordoba and Santa Fe (Center); Province of Tierra del Fuego (Extreme South); Cuyo region (Andean West); Province of Salta (Northeast), and Province of Buenos Aires (Buenos Aires city and suburbs, and La Plata city).

To locate people committed to the fostering of fundamental rights and belonging to the region was suggested when organizing the interviews along the country. Good relations with NGOs and local authorities were also required. A visit agenda was set on that foundation, while people and groups were contacted and their presence was requested. Different interview techniques – workshop, questionnaire, brain storming – were adopt-

ed. Interviews consisted not only in taking notes on people's complaints or worries, but it was also intended to guide the dialogue into a more practical field in which political suggestions to public authorities or modes of action of civil organizations might arise.

In 2003, four missions with delegations of 3 to 5 people, members of the institutions that are part of the Group of Governmental Coordination took place. The following places were visited:

- Posadas City, Province of Misiones (3 to 6 of June), province located to the Northeast of country, 1100 km. away from Buenos Aires, in the border with Brazil and Paraguay;
- Community "Los Polvorines", Malvinas Argentinas District (26 of August), in Buenos Aires second urban belt, 50 km. away from Buenos Aires city;
- General Roca City, Province of Negro River (3 to 5 of November), located in the southwest of country, 1200 km. away from Buenos Aires;
- City of Neuquén (6 of November), capital of the Province of the same name, city seated in the area of the "Precordillera", 1200 km. away from Buenos Aires.

The detailed reports of each mission that have been prepared are to be published in the National Plan's Web Site: [www.plan-discriminacion.com.ar](http://www.plan-discriminacion.com.ar).

Diverse documents containing information for the diffusion of the Plan were also prepared. Amongst them: "Guide for the study of the Conclusions and Recommendations of Durban International Conference"; "Systematization of subjects included in the Recommendations and Conclusions of the Durban International Conference", "Questionnaires".

Periodic information was submitted to and supervision meetings were held by the Group of Governmental Coordination under the presidency of Prof. Enrique Oteiza. Executive and Administrative Coordinators were selected. Terms of Reference and management references for the experts and for the Executive Coordinator were established. NGOs were informed about the accomplished tasks and the first conclusions of the visits were transmitted to local and provincial authorities for their attention.

## **2004**

At the beginning of the year the designation of Dr. Waldo Villalpando as Executive Coordinator was confirmed. The Administrative Coordination was confirmed in Counsellor Federico Villegas Beltrán. Three people were

chosen as experts, with the condition of not being state employees: Dr Horacio Ravenna was proposed by the Ministry of Foreign Affairs, Lic. Norma C. Fernandez by the Secretariat of Human Rights, while INADI proposed Lic. Daniel Feierstein. The three of them were then joined by Lic. Ana González and Lic. Maria Sondereguer, both civil employees of the National Administration. Lic. Miranda Cassino was designated as assistant. On the whole, eight people: three for the Coordination (Executive Coordinator, Administrative Coordinator and Assistant) and five experts. The Terms of Reference were confirmed and the expected services were detailed. The eight accepted to work under these terms, committing themselves to confidentiality and to fit personal schedules to the fulfillment of the responsibilities required by the Plan. It is important to emphasize that all the designations were made on the basis of professional qualifications and not to political designations.

Activities with the complete team were reinitiated in March 2004. An ample dossier of documentation and antecedents were prepared for each expert and a weekly meeting regime was established. This regime had the advantage of inviting people or institutions related to the subject. The experts distributed their responsibilities regarding the writing of the Plan, following the great matters of Human Rights: Civil Rights, Political Rights, Economic and Social Rights, Cultural Rights, plus an item regarding Social Communication. In the course of the investigation these great thematic lines were reflected in analytical thematic areas and institutional scopes that will be listed in short.

The following regional visits were made since April 2004:

- Province of Tierra del Fuego (28 of April to 1° of May). Southern end of the country, 3,100 km. away from the city of Buenos Aires. Cities of Ushuaia and Rio Grande;
- Province of Cordoba (26 to 29 of May). Center of the country, 700 km. away from the city of Buenos Aires. Cities of Cordoba (Capital) and Rio Cuarto;
- Province of Mendoza (30 of June to 3 of July). The Andean west, 1,100 km. away from the city of Buenos Aires. City of Mendoza (Capital);
- La Plata city (20 of August). Capital of the Province of Buenos Aires, 60 km. away from the city of Buenos Aires;
- Province of Salta (22 to 25 of September). The northeast, in the border with Bolivia, 1,700 km. away from the city of Buenos Aires. Cities of Salta (capital), Orán and Tartagal (200 km. away from Salta);

- Province of Formosa (28 and 29 of December), The northwest in the border with Paraguay; 1,2500 km. away from the city of Buenos Aires. City of Formosa.

Towards the end of 2004, 300 interviews were done, whilst 600 concrete proposals were processed and around 50 questionnaires or written contributions from the interviewed groups were received. Members of the group participated in panels and in meetings for diffusion and information. A detailed list of all the groups and people interviewed is found in Annex 2 and descriptions on the visits in Annex 3.

### **Plan Design**

The most important part of the work was the design of the Plan, which resulted from an intense internal debate in which the main subjects and approached were agreed upon. Results of this work are reflected in Section III (*Diagnosis*) of this Plan. Detailed information on procedures and methodology is included in Annex 4.

### **Documents**

Diverse documents have been written as a result of the Plan. On the one hand, the detailed reports of each mission or interviews made in all the country. On the other, summaries of our work discussions and meetings. In addition, several internal documents – used as base for the writing of the Plan – were prepared. In diverse opportunities, documents drafted by our interlocutors – or the institutions that they represent – were received. All those documents are to be published in the Web Site.

### **Administration**

The following agencies have contributed with the management of the Plan: Office of the United Nations High Commissioner for Human Rights (OHCHR), its correspondent in Argentina, United Nations Development Program (UNDP) and Argentine Government. The contribution of the latter consists in the administrative coordination tasks, executed by the Ministry of Foreign Affairs, the contribution of two Facilitators (INADI and Secretariat for Human Rights of the Ministry of Justice and Human Rights), the lending of the physical space for the work of the Coordination (INADI) and the means of communication (INADI). The approved budget was applied



under the double supervision of the Ministry of Foreign Affairs and the Nations United Development Program (UNDP).

### **Supervision**

As it was already stated, the work of the Coordination and the experts was supervised by the Group of Governmental Coordination, presided by the President of the INADI and conformed by an official of the Human Rights Section of the Ministry of Foreign Affairs, an official of the Secretariat for Human Rights of the Ministry of Justice and Human Rights and an official of the Governmental Cabinet of Ministers. The Group of Governmental Coordination met monthly, and received and discussed the periodic report prepared by the Coordination. Concurrency of the members of the Group to the expert's weekly meetings was habitual. INADI Board and the Secretariat of Human Rights remained always informed. Since October 2004, INADI Board has assumed the supervision of the preparation of the Plan and will have the responsibility of its application. The members of the Group of Governmental Coordination (2001 to 2004) are indicated in Annex 1.

# I | International context and national background

# INTERNATIONAL CONTEXT

## The Universal Declaration

Equality and non-discrimination are at the foundations of The Universal Declaration on Human Rights. Hence article 1 states *“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”*. The second part of article 2 completes the pronouncement when mentioning *“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty”*.

Both articles – clear and deep – summarize the rights of equality and non-discrimination, as expressed by United Nations *“are preeminent to all the powers, including the state that can regiment those rights but not derogate them”*<sup>2</sup>. It is also important to point out that the Declaration – as it corresponds to the nature of the document – does not suggest definitions but sets principles<sup>3</sup>. The rest is left to the own dynamics of the defense of these rights; dynamic of which this document is just a part of.

## Convention against Discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination has the historical privilege of being the first – of all that

<sup>2</sup> Naciones Unidas, *Las Naciones Unidas y los Derechos Humanos (1945-1995)*, Department of Public Information, United Nations, New York, 1995, note 19, p. 24.

<sup>3</sup> See Villalpando W., *De los Derechos Humanos al Derecho Internacional Penal*, UCES Abeledo Perrot, Buenos Aires, 2000, from pp. 88.

succeeded the Universal Declaration – to implement an international system of monitoring the States. Approved in 1965 and rushed in practice in 1969, it collected the experience of the Holocaust, yet its approval was hurried by the practice of *Apartheid*<sup>4</sup> in various African countries, mainly South Africa and ex-Rhodesia (today Zimbabwe).

In spite of the fact that at a first glimpse racially related discrimination seems the center of the convention, the introduced definition depicted a wider scope. For it indeed goes beyond the Universal Declaration and defines discrimination as *“shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”*. The range of groups and people protected would afterwards broaden, as it will be seen.

A relevant principle introduced by this Convention – and significant to our Plan – is the one known under the label of “positive discrimination” or “affirmative action”. With the aim of accelerating equality conditions of historically marginalized sectors, clause 4 of article 1 and clause 2 of article 2 establish that it will not be considered as discrimination *“special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved”*. This rule was afterwards included in the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child.

The Convention requires that the States punish by law *“all dissemination of ideas based on racial superiority or hatred, incitement to racial dis-*

<sup>4</sup> The International Convention on the Suppression and Punishment of the Crime of Apartheid defines *“the system as inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them”* (Art. II) and then enounces diverse policies and segregation practices.

*crimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof"* (Article 4a).

As it was previously said, this Convention has been pioneer in the elaboration of a system for international monitoring through establishing the Committee for the Elimination of Racial Discrimination (CERD), a facultative organ that requires the completion of the obligations of the Convention and that is in charge of the supervision of their execution by the States. Decisions of this Committee have created a type of interpretation of the Convention for the practical cases that has been broadening and making more accurate the field of the international protection against discrimination. Several of those resolutions have been taken into account in the making of the Plan. Argentina has not only ratified this convention but has given it constitutional status via the constitutional reform of 1994. Nevertheless, the ratification of article 14 that permits individuals and groups to present cases of violation of Convention principles is still pending.

### **Other International Documents<sup>5</sup>**

In addition to the Convention against Discrimination there were two other important documents that completed the Universal Declaration on Human Rights and that have indirectly reinforced defense of non-discrimination: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These pacts unfold the principles proclaimed in the Universal Declaration by broadening and making more precise the stated rights. It is important to note that these turn into demandable rights before the States (from there the prescriptive nature they own). It is then understandable why both pacts hold bodies for international monitoring and ways of surveillance before of

<sup>5</sup> The following texts were reference literature for the making of this section: Buergenthal Th. y Kiss A., *La protection internationale des droits de l'homme*, Ed. N. P. Engel, Estrasburgo, 1991; Cançado Trindade A., *Tratado de Direito Internacional dos Direitos Humanos*, Editorial Sergio Antonio Fabris, Porto Alegre, Brasil, 1997 (Vol. I); Cassin R., *Veinte años después de la Declaración Universal*, Revista de la Comisión Internacional de Justicia, Vol. VII, N° 2, Dic. 1967; United Nations, *The United Nations and Human Rights*, *op.cit.*; Villalpando W., *De los Derechos Humanos al Derecho Internacional Penal*, *op. cit.*

which the States are to be accountable for their policies. The three documents – the Universal Declaration and the two Covenants and two facultative protocols – constitute the so called “International Bill of Human Rights”. While the Declaration is of a universal character, the pacts – due to their condition of being multilateral conventions – can only have obligatory strength in those States that have ratified them<sup>7</sup>. The pacts have been approved in 1966 and were put in practice as from 1976. These three documents have been incorporated with a constitutional status in Argentina.

There are other international documents important to cite – and that are going to be quoted in the Plan – that tend to precise and extend the struggle against discrimination. Among the most important we find the *International Convention on Suppression and Punishment to Apartheid* (1973), as the culmination of a process of censorship of the international community to discriminatory regimes in south Africa and ex-Rhodesia, followed by the 1985 *International Convention against Apartheid in Sports*. During the nineties their action was suspended due to the political changes that took place in both countries, and United Nations cancelled the international sanctions imposed and the Monitoring Committee – called “Group of the Three” – suspended its action.

In 1979 the *Convention on the Elimination of All Forms of Discrimination against Women* and in 1989 the *Convention on the Rights of the Child* were approved. As it was already said, both conventions applied the principle of positive discrimination. By means of both instruments monitoring committees were created. Argentina has ratified and given constitutional status to the conventions in 1994. However, the ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women – that authorizes individual denounces to monitoring organs against unfulfilling States – is still pending. Finally, in 1990 the *International Convention on the Protection of the Rights of All Migrant Workers and their Families* was approved. As the others, it establishes a monitoring committee that has only very recently (2003) been opened, although it has not yet been regimanted.

<sup>6</sup> Two Optional Protocols that require separate ratification are added to the International Covenant on Civil and Political Rights: 1) Committee’s authorization to receive and consider communications (denounces) of individuals alleging being victims of any of the rights enunciated in the Covenant; 2) Aiming at the abolition of the death penalty.

<sup>7</sup> United Nations, *International Bill of Human Rights*, New York, 1966, pp. 17-18.

It is also important to stress the progress accomplished in the employment field. The International Labor Organization (ILO) adopted in 1998 the *Declaration on Fundamental Principles and Rights at Work*. It was there established that certain labor conventions are to be respected in States belonging to the ILO, even when the alluded conventions have not been ratified for the sole fact of belonging to the ILO. In other words, certain labor conventions acquire the characteristic of being entailing for every State member of the ILO regardless they are particularly ratified or not. Those conventions are related to: a) Freedom of Association and Protection of the Right to Organize (N 87 year 1948); b) Elimination of All Forms of Forced or Compulsory Labor (N 29 of 1930 and N 15 of 1957); c) Abolition of Child Labor (N 5 of 1919, N 138 of 1973 and Recommendation N 146); d) concerning Discrimination in respect of Employment and Occupation (N 111 year 1958).

### **International Meetings: Santiago de Chile and Durban**

Moreover, diverse international meetings tended to promote the principles against discrimination and have served as a framework for Durban International Conference. In 1978 and 1983 two World Conferences to Combat Racism and Racial Discrimination were held in Geneva. In 1993, the World Conference on Human Rights in Vienna approved a Declaration and an Action Plan that called for the rapid elimination of every form of racism, racial discrimination, xenophobia and connected forms of intolerance. Two resolutions (N 1997/74 of April 18, 1997 of the Human Rights Commission and N 52/111 of September 12, 1997 of the General Assembly) and others that followed continued promoting the World Conference against Racism, Xenophobia and Related Intolerance.

Furthermore, the United Nations have declared the 2001-2010 period as the International Decade of a Culture of Peace and Non-violence for the Children of the World. In the same way, year 2001 was declared International Year of Mobilization against Racism, Racial Discrimination, Xenophobia and Related Intolerance. That year was also dedicated to the dialogue between civilizations, addressed to the promotion of respect to diversity, as with the need to find common elements among civilizations. The period 1995-2004 has been declared the Second International Decade of the World's Indigenous People.

## Santiago de Chile Regional Conference

The preparation of Durban – with the category of International Conference – required the organization of previous regional conferences. That is why Dakar, Strasbourg, Santiago de Chile and Teheran Conferences were organized. The Santiago Conference – held between 5 to 7 December, 2000 – is especially important to us. There was a relevant Latin-American participation of public and civil sectors with an astonishing presence of non-government organizations. The situation of discrimination in the Latin-American scenario was discussed.

The Preamble already shows an extended view on discrimination. It was indeed reaffirmed the *“commitment to addressing manifestations of racism, racial discrimination, xenophobia and related intolerance on grounds of race, lineage, color, religion, culture, language or national or ethnic origin, aggravated for reasons of age, gender, sexual orientation, disability or socio-economic status”*<sup>8</sup>. The same Preamble affirms that *“the identity of the Americas cannot be disassociated from its multi-racial, multi-ethnic, multi-cultural and pluralist nature, and that the wide diversity of our societies is a contribution to human coexistence and to the creation of cultures of mutual respect and democratic political systems”*<sup>9</sup>.

On this wide platform, the Declaration and Action Plan were elaborated. Both preceded by reflections and proposals related to “Democracy and Political Rights” and “Globalization process”. From there on, the section denominated “Racism Victims” is studied stressing on three particular groups: a) Indigenous People; b) Afrodescendants; c) Migrants. The “Victims of Aggravated or Multiple Discrimination” are also added: a) Women; b) Children; c) People affected by HIV/AIDS; d) Poverty. Action proposals are unfolded within each subject.

Prevention against discrimination deserves a separate consideration<sup>10</sup>. Four areas of management are to be underlined: Education, Public Information, Communication Media and Internet. These areas also foster propositions in diverse fields of social activity, which are: a) New technologies; b) Non-governmental Organizations and youth; c) Marginalized people; d)

<sup>8</sup> *Report of the Regional Conference of the Americas, Santiago de Chile, 2000, Preamble, Section 8.*

<sup>9</sup> *Idem, Section 10.*

<sup>10</sup> *Idem.* From paragraph 60 in the Declaration and 149 in the Programme of Action.



States juridical responsibility: research and reparation; e) National Human Rights Institutions; f) Reconciliation; g) Crimes against Humanity; h) Humanitarian rights; I) Regional and international cooperation. Regional and International instruments.

### **Durban International Conference**

World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban Conference from now on) was held in Durban, South Africa between August 31<sup>st</sup> and September 8<sup>th</sup> 2001. The report was elaborated in the following three segments:

- a. Foundations and general issues at the beginning of the Declaration (paragraph 1 to 12)
- b. Declaration (paragraph 13 to 122).
- c. Programme of Action (paragraph 1 to 219).

The Declaration (Part b) distinguishes the major problems related to discrimination in our days. Hence its paragraphs start with verbal formulas such as “We affirm”, “We express”, etc. The Programme of Action adopts, on the other hand, a propositional style and, therefore, its paragraphs start with the requirements to the States in verbal forms such as “Urges”, “Requests”, “Invites”, etc.

Both the Declaration and the Programme of Action adopt the same scheme, divided as follows<sup>11</sup>:

- Point I. *Origins, causes, forms and contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance (Decl. 13-30; PA. 1-2);*
- Point II. *Victims of racism, racial discrimination, xenophobia, and related intolerance (Decl. 31-75; PA. 3-57);*
- Point III. *Prevention, education and protection measures addressed to the eradication of racism, racial discrimination, and xenophobia and related intolerance in national, regional and international scope (Decl. 76-97; PA. 58-156);*
- Point IV. *Establishment of efficient reparation, compensation and other resources and measures at a national, regional and international level (Decl. 98-106; PA. 157-164);*

<sup>11</sup> Declaration titles are transcribed here. The Program titles vary but the themes remain the same. From now on, “Declaration” (Decl.) and “Programme of Action” (PA).

- Point V. *Strategies for the accomplishment of a full and effective equality that embrace international cooperation and strengthening of United Nations and other international mechanisms in the struggle against racism, racial discrimination, xenophobia and related intolerance. (Decl. 107-122; PA. 167-219).*

Point I refers to resources, causes, modes and contemporary manifestations of racism and discrimination. The following are detailed:

- Slavery. Specially against “*africans, african-descendents and indigenous people*”. Their effects endure onto today by means of discrimination and marginalization;
- Poverty and economic disparities, particularly reflected in development and underdevelopment;
- Armed conflicts. Its relevance can be tracked in the following conclusion: “*we recognize racism, racial discrimination, xenophobia and intolerance are in the roots of armed conflicts*”;
- Colonial inherited structures;
- Persistence of modes of discrimination and racism in penal systems and in general, in the application of the law. Impunity of human rights violations and fundamental liberties must come to an end.

Point II refers to the victims of discrimination. There is a general affirmation regarding direct and indirect victims of human rights violations, “*many times subjected to multiple ways of discrimination (gender, age, nationality, sexual orientation, social or economic status, mental or corporal handicapped, religious beliefs)*”. Particular cases are then underlined:

- *Africans and African-descendants;*
- *Indigenous;*
- *Migrants;*
- *Refugees;*
- *Other victims: people subjected to people traffic; underage; romany; gypsies; landless and ambulant; farmers in relation to city inhabitants; victims due to religious motifs; gender; handicapped.*

The Programme of Action establishes diverse prevention and action dispositions regarding each sector.

Point III relates to prevention, education and protection measures for the eradication of discrimination. In general terms, it urges States to establish programs to carry out the measures. It is divided in two levels: National and International. Actions in the four following levels are proposed:

- Legislative, judicial, administrative and other measures: *to legislate against discrimination; to punish perpetrators or groups promoting discrimination; to adhere to international conventions in the subject; to adhere to the international Penal Court; to criminalize child and women traffic, etc.*
- Prevention, information, statistics, researches and studies with strong emphasis on prevention measures and affirmative actions: *migratory policies, employment, health, environment, equal political participation for discriminated groups, politicians and political parties responsibilities.*
- Education and awareness: *divulging campaigns, teaching in education centers, human rights studing, training for administration, justice and security professionals.*
- Information, communication and media uses, including new technologies: *preventing discriminatory propaganda via Internet.*

Point IV refers to the provision of effective remedies, reparations and other compensatory measures, being one of the most delicate chapters of the Conference. The habilitation of adequate legal means for justice claims for discrimination victims and the protection of targeted groups from discrimination is recommended. The entry into force of appropriate legislation to assure a rapid repair of damages and the creation of specific institutions for defense of the victims are urged. “*Massive human sufferings and tragic suffering of millions of men, women and children caused by slavery, apartheid, colonialism and genocide*” is recognized and strongly lamented in the Declaration. The Programme of Action enunciates the means of reparation<sup>12</sup>.

<sup>12</sup> *Op Cit.* Paragraph 158. The following are indicated: Debt relief; Poverty eradication; Building or strengthening democratic institutions; Promotion of foreign direct investment; Market access; Intensifying efforts to meet the internationally agreed targets for official development assistance transfers to developing countries; New information and communication technologies bridging the digital divide; Agriculture and food security; Transfer of technology; Transparent and accountable governance; Investment in health infrastructure tackling HIV/AIDS, tuberculosis and malaria, including through the Global AIDS and Health Fund; Infrastructure development; Human resource development, including capacity-building; Education, training and cultural development; Mutual legal assistance in the repatriation of illegally obtained and illegally transferred (stashed) funds, in accordance with national and international instruments; Illicit traffic in small arms and light weapons; Restitution of art objects, historical artefacts and documents to their countries of origin, in accordance with bilateral agreements or international instruments; Trafficking in persons, particularly women and children; Facilitation of welcomed return and resettlement of the descendants of enslaved Africans.

Point V refers to international strategies for a wide and effective equality. Ratification of international documents tending to the protection against discrimination as with human rights and fundamental liberties is recommended, as well as support to CERD and other UN Committees as the promotion of regional actions. The creation of observatories – with the obligation of presenting an annual report – is also recommended: one, to follow the Conference’s dispositions and, another, for the maintenance of continual information in the subject, application of new communication technologies, victim’s orientation, etc. Recommendations of action and support to the High Commissioner for Human Rights (OHCHR) are formulated. The declaration fo a decade or a year addressed to denounce people traffic, specially women and children is suggested. The costs of the actions are to be sustained with regular UN funds and, in that sense, the current budget system is to be modified. A special action regarding indigenous people is suggested. The constitution of a permanent forum on these people’s situation and the provision of resources to a Special Rapporteur on Indigenous People is also proposed. The need to elaborate an International Convention on the subject is stressed.

### **Main controversial subjects**

Diverse subjects obliged a long and hard preparation of the Durban documents. The three Geneva Preparatory Meetings held through 2001 –the last one a month prior to the conference– are to be reminded. Some of the issues are indicated so as to foster transparency:

- Slavery is viewed from the perspective of the *descendants of slaves* as those that inherit discrimination and merit repair.
- Almost the same treatment is given to *victims of colonialism*, although with the tendency of underlying the seriousness of slavery, slavery and colonialism tend to be seen as similar from the view point of the discriminatory effects, throughout the document.
- The subject of *indigenous peoples*, the defense of their integrity and culture as with the property of their land were subject of a long debate. Initiatives were done tending to consider the problem as international and not as a merely national subject.
- The similar way of using the terms *anti-Semitism and Islam-phobia*, thanks to which the strong controversy that took place during the drafting of the report was solved. A formula for similar situations is often added.

- The *Judeo-Palestine conflict*. References to this subject were the source of the bitterest debates in the conference. As it will be noted, the parallel conference of NGO's expressly condemned Israel's Government by stating that its policy was discriminatory. Israel and USA delegations left the conference affirming that the accusation to the Israeli Government had to be accompanied by a condemnation of the Palestinian Government for fostering terrorism.
- The debate on *reparation for the victims of discrimination* –with a special reference to those who have been enslaved and their descendants– was especially difficult. As a result the suggestion of reparation specified in Point IV was established.
- The subject of *migration and international Mafia of people's traffic* have been solved in a "salomonic" manner. On the one hand, separate articles condemn discriminatory practices and persecution of migrants (denounced by countries that "produce" migrants) while on the other clandestine transport of people (denounced by receptive countries) is prevented.
- The *Sexual Orientation issue* – mentioned in Santiago de Chile Conference as a cause of discrimination – was not included in Durban's declaration.
- *Prevention* is a recurrent subject in the whole document, specially in Point III, Segment 2. Early warning techniques are repeatedly mentioned. This is a constructive and interesting suggestion.
- Also, in Point III action strategies are established. The technique of working in *local communities* is not mentioned, although developed countries and the Stockholm Forum proposed it.
  - *Adhesion to international conventions*, in particular the ratification of the Rome Project for an International Penal Court, is recurrent in diverse points of the report.

As usual, a parallel Forum of non-governmental organizations – that elaborated its own declaration – was held during the Conference<sup>13</sup>. Although following the conference's themes, it strongly emphasizes ideological issues related to underdeveloped countries. The conclusions do not differ substantially from the World Conference. Yet the precision there included would hinder agreement at the international forum with State participation: we

<sup>13</sup> United Nations, *NGO FORUM*, World Conference against Racism, South Africa, 2001.

refer to political mentions and denounces against different governments for mistreatment of minorities. The most notorious was the strong censorship of the Israeli policy towards Palestine. The Forum also adopted a positive position regarding migrants in developed countries by giving less importance to the way in which they were transferred. It also admitted an area of sexual discrimination. The Forum's document and the reunion were sponsored by the United Nations although its conclusions were not incorporated to Durban's World Conference Declaration and Action Plan. Several of the mayor non-governmental international organizations chose – in spite of their participation – not to subscribe the final document.

## NATIONAL BACKGROUND

Discrimination in Argentina has a contradictory past. On the one side, after the political organization of the nation (at the second half of the XIX century) migrants –mainly Europeans– arrived to the territory in a greater proportion than in any other country of the continent and, maybe, in the world. The assimilation of these foreigners is a process that can be understood as positive, although with diverse social and psychological costs. Slavery was forbidden early in our institutional history. Indeed, in 1813 – three years after the beginning of the independence process – the “womb liberty” was established and in 1853 slavery was definitively abolished. Nevertheless, discriminatory practices against slave population and their descendents lasted for years. On the other, the campaigns held for eviction of indigenous people from their lands, and in many cases for annihilation (as it occurred in XIX century), as well as the excessive proportion of Afro-American conscripts during the independence wars, constitute an offence in the history of our country.

We understand that, since 1983 – year in which a new democratic period started – Argentinean governments have done relatively coherent improvements to battle discrimination. A serious difficulty is to be found in national economic difficulties that provoke the existence of great areas of poverty and in the insufficiency of the State to put an effective end to social gaps. The successive economic crises the country has undergone reinforced this factor provoking an increase of the amount of the population living under the limit of poverty<sup>14</sup>. When these crises take place, the most vulnerable sectors are the first to suffer its negative effects as seen in our

<sup>14</sup> For the first semester of 2004, 2.316.000 homes were living under the poverty line in Argentina (10.322.000 people). From those, 853.000 homes and 3.960.000 people were indigent. The amount of unemployed and under employed people was, in December 2003, of over 30% of the active population (INDEC, *Información de Prensa*, 17/09/04, based on a national data recollection over 28 urban areas). Rates are inferior to the ones of the last two years. See, Transversal Axis *Poverty and Social Exclusion*.

research. This does not justify that some of the central problems linked to discrimination remain unsolved through the years, with or without economic crisis. This is the case, for example, of the restitution of the lands to aboriginal people as it has been previewed by the Constitution. Other individual or group discriminatory expressions are more related to ethics, psychology, prejudices or xenophobic ideas that emerge in every society.

### **The Constitutional Reform of 1994. Other legal antecedents**

The 1994 Reform raised to constitutional level (art. 75 inc. 22) diverse international documents related to the protection of human rights, amongst which the International Convention on the Elimination of All Forms of Racial Discrimination is included<sup>15</sup>. Hence it must be concluded that the Convention is comparable to all of the other constitutional dispositions and placed above other intentional treaties and to national and provincial legislation. Diverse decisions dictated by the national Supreme Court of Justice have confirmed such preeminence.

As a consequence of this constitutional inclusion, in July 1995 the National Institute against Discrimination, Xenophobia and Racism (INADI) was created (by law N 24.515). It is an organization within the Ministry of Interior, with the aim of elaboration national policies and concrete measures addressed to combat discrimination, xenophobia and racism. At the end of 2002, this Institute was decentralized, although it continues its administrative autonomization process within the Ministry of Justice and Human Rights<sup>16</sup>. An interesting particularity of INADI is that government officials and members of non-governmental organizations are part of its Directory. INADI and the Secretariat for Human Rights – that on the Ministry of Justice and Human Rights – have aims specially related to the fight against discrimination, and their activities are coordinated.

<sup>15</sup> The following documents have been raised to constitutional level: American Declaration of the Rights and Duties of Man, Universal Declaration of Human Rights, American Convention on Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights (and its Optional Protocol), Convention on the Prevention and Punishment of the Crime of Genocide, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of the Child.

<sup>16</sup> Decree 184/2005.



With regards international documents, it can be said that our country has ratified the United Nations Foundation Charter, the International Convention on the Elimination of All Forms of Racial Discrimination (as stated, with constitutional status), the International Convention on the Suppression and Punishment of the Crime of Apartheid, the International Convention against Apartheid in Sports, the ILO C111 Convention concerning Discrimination in Respect of Employment and Occupation, the ILO C169 Convention concerning Indigenous and Tribal Peoples in Independent Countries. Very recently, the International Convention on the Protection of the Rights of All Migrant Workers and Member of Their Families (although its application has not yet been regimented).

Argentina has also ratified diverse inter-American documents related to the subject, for example: OAS Charter, the American Declaration of the Rights and Duties of Man (raised to constitutional status), the American Convention on Human Rights (also with constitutional status), the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women and the "Protocol of San Salvador" referred to the protection of the area of economic, social and cultural rights.

It must be recalled that – as established in article 75 clause 22 of the National Constitution – "*Treaties and concordats have a higher hierarchy than laws*". In 1992 this position had already been established, prior to the reform, in the case "*Ekmedjiiian vs/Sofovich*"<sup>17</sup>. In the occasion of a summary proceeding (*acción de amparo*) on the right to reply alleged by the claimant and supported in the American Convention on Human Rights, the Court founded its sentence on the Vienna Convention on the Law of Treaties, that was ratified in our country in 1972 and is applicable in the national territory through law N 19.865<sup>18</sup>. There are few American countries that have such a favorable legislation and jurisprudence regarding the international conventions named above.

In the 1994 Constitutional Reform the summary proceeding (*acción de amparo*) was incorporated as "*a prompt and summary proceeding regarding*

<sup>17</sup> See, C.S.J.N. "*Ekmedjian Miguel A. c/Sofovich Gerardo y otros*", July 7<sup>th</sup> 1992 Sentence (Fallos 315:1492).

<sup>18</sup> The Court said "*The Viena Convention on the Law of Treaties is an international treaty with constitutional value that establishes in article 27: 'A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty'. The necessary application of this article imposes the argentine State organs (...) to assign primacy to Treaties before an eventual conflict with any opposed internal law*".

*constitutional guarantees, provided there is no other legal remedy, against any act or omission of the public authorities or individuals which currently or imminently may damage, limit, modify or threaten rights and guarantees recognized by this Constitution, treaties or laws, with open arbitrariness or illegality” (article 43, par. 1). In the second paragraph it is detailed that the same action could be interpreted “against any form of discrimination”.*

Following the dispositions of the International Convention against Discrimination, our country expressly penalizes acts of intolerance. Therefore law N 23.592 was sanctioned disposing in its 1<sup>st</sup> article that *“he who arbitrarily withholds, obstacles or limits or in anyway diminishes the full exercise on equalitarian bases the rights and guarantees recognized by the National Constitution will be obliged, upon demand of the person that results damaged, to leave with no effect the discriminatory act or cease in its exercise and to repair the caused moral and mental damage”*. It adds in the second section that *“there are going to be particularly considered discriminatory acts and omissions determined by motivations such as race, religion, nationality, ideology, political or union opinions, economic position, social condition or corporal characteristics”*. As a consequence of those principles, article 2 of the same law disposes to *“elevate in a third the minimum and in a half the maximum of the penal scale (...) when committed due to persecution or hate to a race, religion, nationality, or with the aim of destroying all or a part a national group, ethnic, racial or religious”*.

Regarding organizations, article 3<sup>rd</sup> of law N 23.592 establishes to *“repress with imprisonment from a month to three years (...) those who participate in an organization or do propaganda based on ideas or theories of the superiority of race or of a group of people of a determined religion, ethnic or color that aims for the justification or promotion of racial or religious discrimination of any kind”*. The same punishment is to be applied on those that *“by any mean foster or incite persecution or hate to a person or group of people due to race, religion or political ideas”*.

In what is referred to the undertaken measures to counteract eventual discriminatory or racist platforms in political parties, it is important to underline that article 38 of the National Constitution establishes that *“political parties are basic institutions of the democratic system. This Constitution guarantees the free establishment and exercise of their activities, as well as their democratic organization and performance”*. Therefore, political parties are to organize themselves respecting the main international human rights

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conventions, amongst them the International Convention on the Elimination of All Forms of Racial Discrimination. In addition, article 16 of the Political Parties Organizational Law (N 23.298) comprises these principles establishing that the party's name *"shall neither contain personal designations, nor designations thereof derived, nor the expressions 'argentinean', 'national', 'international' or its derivatives, nor those which meaning affects or might affect the international relations of the Nation, nor words expressing racial, class, religious antagonisms or tending to provoke them"*.

## **II | General considerations on discrimination and racism**

## CONCERNING DEFINITIONS AND GENERAL CRITERIA

Before specifying the methodological framework implemented in the elaboration of the National Plan against Discrimination, we would like to explain the team's perspective regarding discriminatory social practices and the ways in which they ought to be confronted.

Firstly, we understand any of the following actions as discriminatory social practices:

- a. To create or sustain the diffusion of stereotypes on any human group due to any sort of real or imaginary characteristics, they being positive or negative, and to relate them to inborn or acquired characteristics;
- b. To harass, mistreat, isolate, segregate, exclude and or marginalize any member of a human group for belonging to it;
- c. To establish any legal, economic, employment distinction, or a limit to move or have access to certain places or in the assignment of health care and/or education to any member of a human group with the result of withdrawing or denying recognition, enjoyment and exercise of human rights or fundamental freedom.

Secondly, it is worth noting that this Plan *does not consider discriminatory social practices to be explained by any characteristic* of the victims but from the particularities of the social group, society and State that displays discriminatory processes.

Therefore, the analysis of discriminatory social practices in this Plan does not focus on the discriminated groups but in the problems that lead certain social groups to display discriminatory practices. All in the conviction that the one that discriminates – and not the target of discrimination – has a problem, and that is hence not the latter the one that is to modify his behaviour.

When the analysis of discriminatory practices is focused on victims – they being Afrodescendants, Jewish, Arabs, Muslims, Protestants, Jehovah’s Witnesses, Gypsies, women, migrants, foreigners, children, youngsters, elder adults, handicapped, homosexuals, travesties, transsexuals, social marginalized people, people suffering specific diseases, people with penal records, members of certain political groups, or any other human group – the focus of the analysis seems to be placed on what makes society discriminate that group, or what characteristics these groups have so as to result subjects of discrimination.

This type of analysis presupposes their “non-normality” (in opposition to a supposed “normality”), hence discussion merely focuses on the levels of acceptance or “tolerance” of that “non-normality”, that tends to formulate as “abnormality”.

On the contrary, this Plan considers the construction of the notion of “normality” as the first and principal mode of action of a discriminatory practice. “Normality” is a condition that cannot be based on any legitimate previous history, it is only not beneficial for society but also provokes marginalization as well as destruction of identity.

The term tolerance is never used in this Plan because we consider that to understand the need of tolerance towards a certain group implies the recognition of a negative characteristic in them, a negativity that becomes “bearable” due to ethical reasons. On the contrary, the understanding of radical differences in others means precisely the greatest possibility of enrichment, survival and transformation of human beings.

That is why, although acknowledging the dialog with diverse fractions that result victims of discriminatory processes in our country, this Plan abandons the concept of understanding them as “vulnerable groups”. This situation of vulnerability is caused by the society that discriminates and sets them as “victims” and not to a supposed “condition” that might lead them to vulnerability. None of these groups would have become “vulnerable” had there not been a society willing to make them vulnerable”.

## Plan organization

### 1) Transversal Axis

In consonance with what has been formerly stated, the National Plan against Discrimination considers there to be three important axis that go through the matrixes of production of discriminatory social practices:

- Racism;
- Social exclusion;
- Ways in which the relationship between State and society is reformulated.

These three axis (that we have called “transversal” because they go through the whole discriminatory problematic) are to be exhaustively analysed in the aim of understanding what we have called “discriminatory matrix”. This is a way of perceiving our own identity and the identity of the others via binary exclusion operations that work establishing “what I am” in opposition of “what I am not”, “what is normal” in opposition to “what is pathological”, “the national” in opposition to “the foreigner”, etc.

### 2) Areas of Analysis

Discriminatory social practices (crossed by racism, social exclusion and the relation between State and society) become specific in certain modes of “normalizing” society. We have called “Areas of Analysis” the modes in which they gain specificity.

- Age: In relation with the age of the victimized groups, being them adolescent or aged adults;
- Ethnic-National: When they respond to a stereotype built on nationality and/or ethnic origin of their victims;
- Gender: To analyse stereotypes and polices refereed to this subject;
- Sexual Identity: related to the ways of “normalizing” sexual identity and the effects that derive from it;
- Migrants and Refugees: Due to the characteristics of the migratory policies and asylum policies;
- Special Requirements: In reference to the people that have particular needs that are not taken into account within the dominant logic of normalization;

- Political and Ideological: Referred to the political party identities or professed ideas;
- Religion: Referred to the normalization of a religious belief and/or stigmatisation of any other mode of religion and or spirituality;
- Particular Situations: Referred to any other specificity of the discriminatory social practices not contemplated in any of the former areas.

### **3) Institutional Fields**

We finally consider that certain areas of the State and/or social functioning result vital, not only for the construction of discriminatory matrices but also for the attempt of reflection upon the modes to undermine them. That is why the Plan proposes a systematic analysis of these scopes aiming to detect their modes of commission and/or legitimisation of discriminatory social practices, and suggests actions that tend to stop their reiteration while also leading to collaborate in the design of pluralist cultural matrices based on mutual respect and enrichment.

Those institutional fields are:

- Justice Administration and Legislation;
- Public Administration;
- Education;
- Security Forces;
- Media;
- Health.

Diminishment of discriminatory social practices has a value of its own as a positive modification and ethic obligation of our life in community. It is, furthermore, strongly related to the decrease of other problems suffered by modern societies: poverty, social exclusion, indifference towards the other.

We present the Argentinean State and society a series of suggestions to cooperate in the shaping of another type of country, a society in which everybody shall enjoy to live together.



# III | **Diagnosis**

Transversal axis

# RACISM

Processes of racism, discrimination, social segregation or exclusion can be understood from different points of view. The term “race”, predominant in centuries XVIII<sup>th</sup> and XIX<sup>th</sup>, is currently abandoned due to its scientific inconsistency (Biology has never been able to prove the existence of genetic structures of race) and to political reasons (the effects of terror and collective death with which it contributed).

Nevertheless, the concept of racism is still being used, as a way of referring to the set of ideas or social practices based on the belief of the existence of races. It is worth – when becoming conscious of these problems – to initiate our analysis by distinguishing and specifying two different fields of social practices often grouped under the concept of racism:

- a) We shall call the first one “heterophobia”, constituted by the fear, surprise or confusion before the other, fear which is expressed as fear of the unknown and that is part of the structure of personality of the social subjects;
- b) We will differentiate the other as the proper concept of racism (that Todorov reformulates as “racialism” to distinguish it from the vulgar use of the term racism<sup>19</sup>), and that is defined by an ideological set that implies modalities of construction of the own identity and of the alterities that generally appear opposed (hierarchically) to it.

This first distinction is fundamental when thinking about an explanatory model of these social practices. While heterophobia is a very old social process (its roots are to be found in anthropological and psychological explorations of the first human groups and of the ghosts that the unknown evokes), racism is a modern ideological framework, which has existed for three centuries. Beyond the use racism might make of heterophobia,

<sup>19</sup> Todorov T., *Nosotros y los otros*, Ed. Siglo XXI, México, 1991, p. 115.

beyond its mutual interrelations, the specificity of racism is not exhausted in heterophobia. Therefore, those phenomenological, psychological or situational analyses that intend to explain the characteristics of the discrimination processes, present us segregation and exclusion without making reference to their “social functionality”, and end up darkening one of the central knots of the problematic as they are not able to historize the concrete specificity of these social practices in the present and the recent past.

Therefore, we understand, racism as: a social and fundamentally modern phenomenon, as a set of ideologies, preconceptions, stereotypes, prejudices that tend to divide humanity in supposed groups that would share certain characteristics (with a certain hierarchy amongst each), under an explanation that would find its foundation on a supposed genetic inheritance that would impose the possibility (even unavoidable) of certain behaviors in damage of others.

### Evolutionist and degenerative racism

Zaffaroni distinguishes<sup>20</sup> – after reformulating Hannah Arendt – between two basic modalities of procedure of the racist ideology:

- a. *Evolutionist racism*, that operates by “inferiorizing” its victims and that was the basic model of English colonialism or the evolutionist explanations of Morgan, Tylor or Spencer; and
- b. *Degenerative racism*, that operates by “degeneration” of its victims, considering they constitute a danger for the species. It is the model of the French XIX<sup>th</sup> century racism and of the works of the Count of Gobineau, and it was reformulated and applied by Nazism in its eugenic campaigns.

Both racist modalities have generated segregation processes, exclusion, discrimination and have led to the implementation of genocide social practices. Consequences of both modalities of racism must be confronted, but it is important to distinguish their modes of conceptual work since they are not equal nor they produce equal speeches. The modes of dismantling them might also be different.

Meanwhile we can agree with Zygmunt Bauman<sup>21</sup>, that all nation-states produce two simultaneous ways of negation of alterity:

- a. The *liberal way*, which tends to homogenize the figure of the other in

<sup>20</sup> Zaffaroni E., “*Criminología. Aproximaciones desde un margen*”, Termis, Bogotá, 1998.

<sup>21</sup> Bauman Z., *Comunidad*, Ed. Siglo XXI, Buenos Aires, 2003.

the “Citizen of the State”, producing a negation of its own alterity. This is the case of an annihilation of the other’s alterity, through the negation of its language, of its culture, of its customs. It was the policy unfolded by, for example, the Argentine State towards immigration that arrived from Europe, Asia or North Africa; and

- b. The *nationalistic way*, that tends to homogenize the population by eliminating the body that represents the alterity (genocide policies, in which annihilation of the does not refer to the other’s alterity but to its own material existence, its corporal existence). It was a policy followed by, for example, this same State with the indigenous populations – in Chaco and in Patagonia – during the so-called “Campaigns to the Desert” or, also, in relation to the state policies towards the afrodescendant population during the XIX<sup>th</sup> century.

### Racism in Argentina

Although these phenomena have been common to all modern Nation-States, they gain specificity in each particular historical configuration. In the Argentine case, the two racist modalities are conjugated in a differentiated treatment before what the State considers diverse “alterities” through the concept of *assimilation*.

The Argentine State is constituted on the basis of the negation of its own history and on the attempt to transform itself through immigration of those human beings that were considered as incarnations of modernity and progress.

We can – in a very synthetically mode – say that the first Argentine racism – unlike classical ethnocentrism – is formed as an “imported” racism, that retakes European racism (fundamentally English) and keeps its values, considering the original or afrodescendant populations as “primitive”, “Barbarian” or “little evolved” and trying to replace them with immigrants from those collectivities that were seen as “civilized” (and that fundamentally came from the north of Europe). This preference of European immigration still subsists in the National Constitution. Article 25 states that “*The Federal Government shall foster European immigration; and may not restrict, limit or burden with any tax whatsoever, the entry into the Argentine territory of foreigners who arrive for the purpose of tilling the soil, improving industries, and introducing and teaching arts and sciences*”.

The policy developed by the Argentine State regarding the aboriginal or

afrodescendant population pointed to their annihilation (material and symbolic) for they considered their “non-assimilability”, as well as their impossibility “to be melted” in the “crusted” of national identity, essential.

While receiving a quite different immigration than the expected (that did not come from the north but from the center and the south of Europe, and from North Africa and Middle East), the State policy tended to adopt what Bauman characterizes as the “liberal mode”. Trying “to assimilate them” to the national identity through, particularly, the abandonment of traditions and language, fostering integration through the school system and the set of historically related celebrations.

Hence, racism unfolds its two faces in the conformation of the Argentine Nation-State: nationalist and genocide regarding aboriginal peoples and afrodescendants; liberal and “assimilator” regarding the Spanish, Italians, English, Germans, and in a minor degree regarding Jews and Arabs immigrants – who have been considered more or less “assimilable” in different periods and by different intellectual groups.

### **Transversal character of racism**

These modes of racism (evolutionist, degenerative or a combination of both; liberal, nationalist or a combination of both), tend to be part of every identity model, every figure of alterity, and hence every discrimination, segregation or exclusion process.

Discrimination towards aboriginal peoples, afrodescendants or migrants from neighbouring countries is articulated with the logic of “Civilization or Barbarism” widespread in the making of the nation. Anti-Semitism or Islamophobia are articulated to racist phenomenon of international character that penetrate and particularize the ways in which local racism develops. Discrimination of handicapped people or of people that suffer from certain diseases relates to ways of understanding health and human body based on a logic of “normalization” of identity; a logic of conformation of identical citizens – “productive and civilized” – that was strongly present in the model of “social higienism” of French origin. “Normalization” is also applied to the ways of understanding sexual identities and the roles established for men and women, to the lack of productivity of the aged adults to the stereotyping of “delinquency” and its association to certain social, national or cultural sectors.

It is for that reason that, beyond specific problems (that will be stressed

in each *Area of Analysis*) it is required to become aware that the role of racism as ideological articulator of the diverse discriminatory phenomenon. And therefore, to think about modalities of institutional action that, along with urgent measures tending to dismantle the most notorious and less tolerable modes of discriminatory practices, might lead to the dismantling of those racist matrices that sustain the segregation and exclusion practices in our societies.

### **New racist modalities: “The Racist Aesthetics”**

A change in focus is one of the fundamental changes brought about by the path from modernity to post-modernity: an understanding of the world as based on labor ethics to another based on aesthetics and consumption<sup>22</sup>. A similar metaphor can be used for the implementation of racism.

Hegemonic racism until first half of the XX century implied a vision of the other that pretended to be scientific. The idea of a human evolution divided in inferior and superior stages was intended to be sustained by an anthropological foundation (skull measurements, intellectual coefficients, theories on the types of blood and their degeneration, on the monstrous effects of the “crossovers”, on the psychological characters derived from a phenotypic conformation, etc.).

Delegitimization of classical racism since the end of World War II and the advances of Biology have undermined the possibility of stating similar theories (nowadays located in the scope of small radicalized groups).

Nevertheless, that the theoretical use cannot be sustained does not imply that open racism does not continue to be in force in innumerable territories. Alike every ideological process, the forms of the old survive; they coexist and fluctuate between the marks of the new. Old racism resists to be vanished, even though their “scientific” basis and functionality have lost sense, even though there is already a new type of racism that can be summoned up and that can unfold similar tasks in an even more efficient way.

It would be probably necessary to think that this “old racism” no longer was absolutely functional to an interconnected world where, with the sufficient money, even those supposedly permanent characteristics (like the color of the skin, or the sexual structure, or the color of the eyes, the width

<sup>22</sup> See in particular Zygmunt Bauman's work: *Trabajo, consumismo y nuevos pobres*, Gedisa, Barcelona, 1999 and *Modernidad líquida*, FCE, Buenos Aires, 2002.

of the hips, of the chests or the lips, the face features, the signs of the age, the gestures, the ways to dress) can be transformed. For if phenotypic characteristics cannot be maintained through time... how to sustain a racist speech based on a biological aspect that could eventually be changed? The relative delegitimisation of "classical racism" is not only related to the fright generated in the West by the Nazi violence, but also (and in a hard to establish measure) to the contradictions brought about by the changes that post-modern fluidity introduce into the internal coherence of this speech.

*Normality*, that used to be based on the way people earned their living (which usually meant working) tended to become, little by little, into an aesthetic normality, a *life style*, based on certain way of walking, of dressing, of appearance. It is difficult today to sustain the nuclear family ethical model, the stable and routine work, the normal and repetitive activities, all the models of "normality" that used (and although stroked, still construct) to define "normality". Neither work nor family, not even friends or leisure activities have resisted to the post-modern process of flexibility. Everything changes at such a speed that prevents any analysis or processing. Families and employment seem to overflow stability due to the permanent and unforeseeable transformations.

As it is hard to keep up with a norm in activities and in life decisions, it is at least intended to "normalize" our own body, what is shown, "aesthetics". If it is not possible to live a "normal life", it is intended "to standardize" the looks, "to look like the rest". Of course, this aesthetic normality is restricted for those sectors of population with economic difficulties to transform their looks, even though clandestine markets of second class quality, purchasable clothes, surgeries of low cost appear. Although the access to a way of looks is restricted, an offer for all the levels of society seems to be offered hence stratifying the distance to the ideal looks regarding economic possibilities.

Nowadays, "ugliness" is considered as a subject of "election" because looks can be changed. On this base, this new model of aesthetic normality and racism grants greater force and supposed legitimacy to "preventive" criminology. The so-called "prototype look" will be a sufficient mark for an arrest for record inquire. The lack of adjustment to the predominant aesthetic model is defined as a symbol of danger. Racism becomes subtler, but settles almost unconsciously in our way of relating to our fellow men.

Condemnation to "classical racism" allows, nevertheless, that this new

racism is not labeled as racist. That is to say – and to prevent us from confusing the strength of these racist paradigms – that if the old racism based on the color of the skin or the disposition of the face is still useful to ideologically indoctrinate certain popular sectors of the Third World, by dispersing and multiplying confrontations, the new subtle and apparently not incoherent with universal human rights racism can be assumed by the citizens of big cities and by the middle-class in a way in which even the fight against racism can be reshaped into a racist strategy, as a struggle against that “racism of the underprivileged” that tends to be understood as a by-product of their “ignorance”.

The businessman, the political employee, the owner of a mass communication agency will hire people of different color or different religion to show their pluralism. They will, nevertheless, not consider themselves as racist when choosing employees – secretaries, image advisers, publicizers, etc. – according to a beauty paradigm rather than for work qualities. This employer does not feel racist when imposing “good looks” as a condition to get a job. That is why this racism appears subtler. It marginalizes more or less the same people as usual though under arguments that seem to be more natural, product of “taste” rather than ideology.

Pluralism is then transformed into a closed pluralism, a pluralism that is only practiced “inside” a single aesthetic model. Its success rests – partly – in the non-achievability of the model. Access to the status of normality is gained by transforming ourselves but no matter how hard it is tried, it is never possible to be as thin as to have the looks of a fashion model, to be as young as required. And, as any other solidarity breaking model, the way to approach the criterion of aesthetic normality seems to point at the “non-normal one”, to find a body still more remote of the ideal than the own one, in order to mock, make fun and insult it. The existence of TV shows centered in joking about other peoples body and intending to transform it and to dress it (in fashion slang “to produce it”), refers to the strength with which this second way of racism is arrayed in our societies.

The transversal long term action proposals must, therefore, set out to disassemble old racism anchored in national, cultural or phenotypic differences and this new racism of broader social character, bound to an aesthetic paradigm that is assumed as universal, as a model to be reached by humanity.



## POVERTY AND SOCIAL EXCLUSION<sup>23</sup>

The analysis of the indicators of the *Permanent Housing Survey* (EPH) – carried out by the National Statistics and Census Institute (INDEC) – shows a dramatic decline in the socio-economic living conditions of the last thirty years (1974-2004). During the stages of economic growth, indicators show that their recovery capacity tends to be slow, and does not easily reach previous levels. These results imply that the living conditions of the Argentine population have become structurally more vulnerable and frail. At present, almost 50% of the population falls under the poverty threshold.

The accelerated impoverishment process of the Argentine population has been of such magnitude that it seems more adequate to use the notion of *socio-economic poverty*. This is because it covers a broader scope of situations and is less labelling and permanent than that of “social outcast” and therefore accounts for those sectors characterized as indigent (the unwaged, lacking minimal living conditions) as well as those who are included within the formal labor market but are not able to meet their basic needs.

Because none of these groups may make use of the basic rights consecrated by the Universal Declaration of Human Rights and the International Covenant on Social, Economic and Cultural Rights they are permanently discriminated in public and private scenarios.

<sup>23</sup> This report is based on the indicators provided by *EPH* (Permanent Housing Survey), *INDEC* (Nacional Statistics and Census Institute) and other studies based on these same indicators. The first statistics provided by EPH date from 1974 although the systemization and the broadening of its coverage is initiated in 1988. Statistical data from UN - CEPAL; INDEC - 2001 National Census of Homes and Housing; Ministry of Economy and Production; World Bank; Social Programs Information, Surveillance and Evaluation System (SIEMPRO); UNICEF Argentina has also been taken under consideration.

### Characteristics of this stage

The restructuring of the Argentine society that the Military Dictatorship initiated in 1976 profoundly modified the social and economic condition of the country installing a new model of accumulation. During the following twenty-five years, the opening up of the economy drove an industry-centred economic model – fulfilling the massive demand of the internal market – to another one centred on financial speculation, which brought about an ever-increasing indebtedness. The consequence: an incredible destruction of the productive structure, a great concentration of wealth in few hands, and a phenomenal transference of national resources abroad<sup>24</sup>.

It must be pointed out that during the last decades the Foreign Debt has become a central factor in the restructuring process of the Argentine economy. Its increase became of great importance between 1978 and 1982 (as a consequence of the decisions taken by the Dictatorship to have the State become responsible for national private debt) and in the subsequent decade of 1991-2001. The commitment of resources take up great amounts that should have been applied in State policies aiming at the basic needs of the population.

Constitutional governments continued to apply the same neo-liberal economic model proposed by the Dictatorship (1976-1983), and since 1991 deepened it by applying structural reforms, open economy policies along with transferring State-owned companies to private groups. The outcome of this model was massive unemployment in both industrial and commercial private sectors (bankruptcy of small and medium enterprises), as well as in State areas of natural resources and public services.

The productive system underwent profound changes. High-value industries – along with creators of genuine employment – gave way to primary goods industries hence provoking a break-up in the productive chain.

### Poverty and Indigence

The phenomenon of accelerated impoverishment and social exclusion that the country has undergone is clearly perceived when available data is examined. In 1974, employees from different economic areas received 43% of the income while, at present, the percentage has decreased to 20%<sup>25</sup>.

<sup>24</sup> Basualdo E., Lozano C., *A Veinticinco años del golpe. La economía argentina luego de la dictadura*, IDEF - CTA, Buenos Aires, 2001.

<sup>25</sup> Basualdo E., "Las Reformas estructurales y el plan de convertibilidad durante la década-

According to the information furnished by INDEC, at the beginning of 1970's the Argentine population was of about 23 million inhabitants, among which less than 2 million were poor. At present, of a population of 37 million inhabitants, more than 17 million fall below the poverty threshold.

When poverty levels are measured according to family income, it is to be noted that it has risen dramatically in the last thirty years. From October 1974 to the first semester of 2004, the number of inhabitants below the poverty line in Gran Buenos Aires (GBA) has risen from 4.7% to 42.7% and even reaching a 50.9% in certain districts. The number gathered by EPH for the 28 principal urban conglomerates is of 44.3%.

Levels of indigent population have risen as well. In October 1974, the registered percentage in GBA was of 2.1% and it rose to 15.2% in the second semester of 2004, reaching 18.2% in the first urban belt. In the 28 principal urban conglomerates surveyed by EPH, the percentage was of 15.2%.

From 1998 to 2002, poverty and indigence reached maximum historical levels. In October 2002, 57.5% of the population lived below the poverty threshold, whereas 27.5% fell below the indigence level. In 2003, an important recovery occurred which was to continue in a lesser degree during 2004<sup>26</sup>.

The degree of indigence and poverty varies according to the region. The EPH shows, for the first semester of 2004, 60.3% of poverty and 30.4% of indigence in the north-eastern regions of the country, whereas in the north-western areas the percentages are 56.4% and 24.5% respectively. Other regions – such as Cuyo, Gran Buenos Aires and the Pampean – have poverty levels of 40% and indigence levels of 15%. The Patagonia region registers the lowest percentages: 31% of poverty and 12% of indigence.

The rise of infant poverty and indigence is an outstanding feature. Data collected by EPH in the second semester of 2004 shows that 50% of those below the poverty line were less than 22 years old, but underlined the fact that the population below the age 13 years constituted 63.4% of the poor and 30.1% of the indigent. Among adults, we find there is a tendency of

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da de los noventa. El auge y la crisis de la valorización financiera" in *Realidad Económica* N° 200, Buenos Aires, 2003; Altimir O., Becaria L., *Distribución del ingreso en la Argentina*, CEPAL, Buenos Aires, 1999.

<sup>26</sup> Lozano C., Raffo T., *Pobreza e indigencia. Mapa actual, evolución reciente y tendencias*. IDEF – CTA, Buenos Aires, 2004.

feminine helplessness: percentages referring to sex show that women represent 51.3% of the poor and 51.2% of the indigent<sup>27</sup>.

Alongside to structural poverty new forms of pauperization appeared. Although some homes can not be placed within the group of people with unsatisfied basic needs<sup>28</sup>, yet they have suffered a substantial lowering of their income. This new pauperization has increased due to unemployment, underemployment and growth of temporary employment, which does not offer any kind of insurance or welfare.

During the 90's, the homes which showed greater frailty were single parent families supported by non-formally educated women and also large families with parents with low formal education levels. These groups, which register high poverty rates, are most liable of not getting any kind of social service, of suffering labour discrimination and having their children drop out of school. In 2001 the percentage of educational drop out was higher amongst youngsters belonging to families that live in poverty<sup>29</sup>.

Specific State policies have recently been developed ("Plan Trabajar", "Plan Jefes y Jefas", etc.) for people who are below the indigence line, providing for insufficient nourishment and not reaching basic needs. In addition, structural discrimination becomes more acute as a consequence of corrupt local political practices in the distribution of welfare (*clientelism*).

### Income distribution<sup>30</sup>

Although there has been a decrease in the levels of poverty and indigence in comparison to 2002, an attenuation of this recovery process has been

<sup>27</sup> Source: *Boletín estadístico*, IDEF-CTA, Buenos Aires, 2004.

<sup>28</sup> VVAA, *¿Catástrofe o nueva sociedad? Modelo Mundial Latinoamericano. 30 años después*. IDRC - CRDI/ IIED, Buenos Aires, 2004.

<sup>29</sup> Source: *Características demográficas y pobreza en la Argentina*, Departamento de Economía, Universidad Nacional de La Plata, 2002.

<sup>30</sup> The Gini coefficient measures income inequality in a population through family *per capita* income. This coefficient varies between zero – ideal situation in which all individuals or families of a community have an equal income – and one – reference value for income high concentration. Values around 0.30 correspond to equitative distribution situations whilst values over 0.60 are to be considered as highly inequitative. While Gran Buenos Aires (GBA) was placed around 0.409 in October 1986, during the hyperinflationary crisis of 1989 rose to 0.509. The coefficient reached its historical maximum in October 2002 with 0.528. See: 2003, World Bank, *Desigualdad en América Latina y el Caribe: ¿Ruptura con la Historia?*.

<sup>31</sup> Source: *Boletín Estadístico*, IDEF - CTA, Buenos Aires, 2004.

noticed during the first semester of 2004. This indicates a deterioration of living conditions<sup>31</sup> that cannot return to the 1974 levels in the short or medium term because it becomes structural as long as income distribution inequality is not modified in the present economic model: more than 52% of the total income is concentrated in 20% of the population<sup>32</sup>.

The percentage that represents the actual income of the employed, together with the amount of income destined to retirement and pension funds, is 25.6% of the internal product, whereas in 1974 it represented 43%. On the other hand, the earnings of the 100 best selling companies in 2003 underwent an expansion of 47%, a growth which is 130% higher than the internal product<sup>33</sup>.

During the last thirty years, the gap between the income of the 10% richest population with regards the 10% poorest has broadened. From 1974 to 1991 it jumped from 9.5 to 19.5 times and it reached the maximum of 42 in 2002. During the fourth trimester of 2003, the 10% richest section of the population disposed of 36.4% of all the income generated, whilst the 10% poorest only disposed of 1.3%. Thus the 10% richest had an income 28 times higher than the 10% poorest. Recent data of the INDEC for the third trimester of 2004 raises that number to 32.8<sup>34</sup>.

### **Employment and labor situation<sup>35</sup>**

The problems concerning employment have been central in the social agenda of the period 1974-2004. The economic policies of the Dictatorship and of the following governments ruptured the traditional labor organization of the country and brought about high unemployment rates as well as work instability. Salary levels diminished significantly in the 1975-1980 period, during the hyperinflationary crisis and during the devaluation of 2002. In spite of the economic growth, the productive reconstruction that commenced in the latter stages of the 1980's (economic opening, lowering of the exchange rate of the peso theincrease of productivity due to techno-

<sup>32</sup> Source: INDEC-EPH, 2004.

<sup>33</sup> Source: *Boletín Estadístico*, IDEF - CTA, Buenos Aires, 2004.

<sup>34</sup> Source: INDEC - EPH, 2004. See also *Clarín*, March 11, 2005.

<sup>35</sup> The following texts were consulted for the making of this section: Beccaria L., Altimir O., Gonzales Rosada M., *Economía Laboral y Políticas de Empleo*, CEPAL - Naciones Unidas, Buenos Aires, 2003; Lozano F., Raffo T., *Mercado de Trabajo: Estructura Actual, Evaluación reciente, situación regional y perspectivas*, IDEF - CTA, Buenos Aires, 2004.

logic modernization) did not interrupt the tendency of unemployment rate growth, resulting in the increase of work market outcasts and employment instability.

The unemployment estimate in May 1974 was of 5%, whereas in the third trimester of 2004 it reached 13.2% (a 19.1% of the economically active population if social welfare is not taken into account). The maximum unemployment rate (21.5%) during this period was registered in May of 2002. The combined statistics of unemployment and underemployment show that in 1974, 10.4% of the population had "work difficulties", whereas in 2004 the percentage grew to a 28.4% – reaching a peak of 40.1% in 2002. Thus it may be implied that the real unemployment rate, at present, tops by 48% the average rate measured during the "convertibility regime" (under which the peso had been pegged at parity with the U.S. dollar since 1991) and it tops by 247% the average of the 80's decade. Meanwhile, unemployment plus underemployment rates grow by 23% and 138% respectively<sup>36</sup>.

The regional analysis shows that the global tendencies of the labor market are expressed differently in diverse regions of the country. The worst employment situation and work performance is seen in the Gran Buenos Aires area (where 42.8% is urban population), followed by the north-eastern and the Pampean regions (third trimester 2004).

Employment has become scarce and has become qualitatively frail in relation to stability, salary level and social insurance (no employer coverage of health insurance or pension funds). Only 40% of the workers have insurance coverage in urban areas. This means that 60% are independent workers or are illegally employed. The reforms of labor laws issued during the last fifteen years have greatly damaged working conditions (so-called "labor flexibility"), limiting working stability and legal coverage of recorded workers.

According to the 2001 census, 56% of the working force (or 83% if we take into account those who have not reached their first full year at their job) is situated at levels that reflect high work frailty: domestic helpers, non-professional independent workers, non-registered employed workers, or people on welfare. On the other hand, salary and income charts present profound heterogeneity, characterized by low incomes and high dispersion. This heterogeneity operates on an inequality pattern because the weakened working force presents average incomes that are 50% inferior to the occupied force.

<sup>36</sup> Source: INDEC, 2001.

Desindustrialization – fundamental in the fall of employment– was very accelerated: industry went from representing around 30% in 1973 of the local GDP to representing 16% at the end of the nineties<sup>37</sup>.

On the other hand a substantial lowering or stagnation of the salaries was registered upon those workers that maintained their employment. According to the Economy and Technology Area of FLACSO, the salary withdrawal can be currently clearly be noted in the real salary average, for it is approximately 60% lower than registered for the year 1974<sup>38</sup>.

What was stated above implies that a great number of those amongst the poor is integrated by people that are currently employed. The character of the “poor workers due to the earned salary” was not widespread at the beginning of the seventies<sup>39</sup>. There is also a general and strong process of frailty of the working conditions since the implementation of the “labor flexibility”, which strongly reduces stability and hence the possibility of improving living conditions, health care and public services.

### **Social security and public services**

Great part of the population who used to benefit from health care systems have been cut off and therefore provoked an increase in the amount of demands upon public hospitals and other State services, which have not experienced changes neither in budget nor in the human resources required to respond to this new situation.

Regarding pension plans, important sectors were motivated to leave the State systems and to join Private Retirement Plans (*AFJPs*), thus bringing about a double negative consequence. On the one hand, withdrawing funding from the State retirement system, that historically used to guarantee retirement of the whole of the working population, due to the fact that funds were transferred to the private retirement agencies. On the other, because an important part of those who joined *AFJPs* cannot currently afford the increase in monthly payments, therefore remaining without any retirement plan at all.

In addition, the privatization that took place during the last decades of

<sup>37</sup> Schorr M., *Industria y nación*, Edhasa, Buenos Aires, 2004.

<sup>38</sup> Arceo E., Schorr M., *Argentina: del “modelo de la Convertibilidad” al “modelo de dólar alto”*, Área de Economía y Tecnología – FLACSO, 2004.

<sup>39</sup> CELS, *Informe anual del Centro de Estudios Legales y Sociales*, Buenos Aires, 2003.

all basic public services (water, electricity, gas, etc.) has placed these services in the hands of private companies hence, linking the income of the citizens to the access to basic services. Moreover, almost half of the Argentinean population's access to these services has been merchantilized. Demantling of national railroads, on the other hand, has left entire populations – that depended upon the existence of train services – in a situation of defendeless.

### **Environment, poverty and social exclusion**

The economic transformations undergone by the country during the last 30 years have changed part of the productive map provoking an important broadening of the agricultural frontier<sup>40</sup>. Although Argentina has natural advantages on this topic compared to other Latin-American countries, this transformation was usually based on the destructive exploitation of forests, wild life and soil depleting or in short term development projects that were abandoned shortly after depleting the virgin resources.

This phenomenon meant – in social terms – the expulsion of indigenous communities and farmers from their traditional lands as a consequence of the growing trend of land sellings to agro-exporting enterprises. Concentration of land owning, expulsion of native communities – that are left without their traditional living resources – and bankruptcy of small or medium agriculture producers increased poverty in rural areas.

There is a wide agreement on the existence of environmental problems in Argentina: soil depletion and advance of the desertification processes; biological diversity loss (degradation and loss of forestall systems as well as degradation of oceanic and coasting eco-systems due to an over exploitation of resources, important developments and species introduction, etc.); increase of the vulnerability levels facing extreme natural events; high rates of water contamination (due to the lack of proper industrial and non-industrial waste treatment) and worsening of hydric stress;

<sup>40</sup> As an example, according to estimations of the Secreatriat for Agriculture, Fishing and Alimentación, between 1997 and 2004, the soy planted area grew in 7.5 million hectares. This growth was possible over the reduction of almost 4 million hectares cultivated with corn, sunflower and sorghum. On the other hand, over 3.5 million hectares of the new agricultural cultivates were taken away from livestock areas. It is also important to note that 1.7 million livestock lost hectares corresponded to the warm region that hosts 60% of the total national livestock.



inadequate use of space, territorial misbalance, and non-balanced urban growth; inadequate management and location of solid, industrial or non-industrial waste (particularly important in the case of dangerous and pathogenic waste); deficient management of dangerous substances and chemicals (growing use without integral contamination prevention measures).

The Argentinean population living in poverty is particularly exposed to diverse environmental risks. The most relevant factors that jeopardize this population to environmental alterations and to inefficient environmental management (divided in several organizations of national, provincial and municipal levels) are:

- Lack of sanitary infrastructure: according to the national census of 2001, 52.8% of the homes lack toilets with water discharge and a proper drainages to public networks<sup>41</sup>, whereas 16.9% have toilets without water discharge or lack toilets. 20.7% of the population live in B type-houses<sup>42</sup>, huts or humble cabins. The extension of sanitary services and potable water in low-income neighborhoods and marginal areas does not reach the levels to mend the given situation.
- Exposure to air pollution and contamination of the fluvial system: contamination due to industrial and non-industrial waste is one of the most important environment problems of the country, particularly in the Rosario-Buenos Aires-La Plata fluvial system. Degradation of subterranean resources has reached worrinsome levels, mainly in the Gran Buenos Aires area, where disordered industrial location is added to the location of important industrial centers without the sufficient basic infrastructure.
- Intensive use of agrochemicals in rural areas: inadequate manipulation and use of prohibited products are also to blame for the current pollution of these areas and for the appearance of health problems in the population. These problems are seriously affecting the outer city environments (those close to rural areas exposed to agrochemical products), where we find most of the population living in poverty settlements<sup>43</sup>.

<sup>41</sup> Includes houses with toilets with water discharge, septic camera draining pipe and blind hole and houses with toilet with water draining and draining pipe to a blind hole or an excavation.

<sup>42</sup> B Type houses are defined as all housing that have at least one of the following characteristics: soil, bricks or similar materials floors (not ceramics, wood, marble, etc.), or have no tube water provisioning, or do not have toilet with water discharge.

<sup>43</sup> See the preliminary report of the epidemiological study carried out by Dr. E. Schneider

- Exposure to urban and industrial refuse: because there is a lack of dangerous residue treatment plants, these are left in the open air, in septic tanks where they filter down to the subterranean waters and streams, causing very important health problems to people in settlements.
- Vulnerability in the face of natural disasters (floods, crop fires, scattering of volcanic ash, earthquakes, etc.): great part of the population is at permanent risk as seen in the periodic floods that the country has undergone. This situation is due to the lack of preventive natural disasters and of “post-disaster” management policies.

### Discrimination Axis

It is due to what has been stated above that we believe that the characterization of *situation of socio-economic poverty* is an expression which includes both every level of social, economic and institutional exclusion of unemployed as well as workers considered “employed” by official statistics. Underemployed workers face the same difficulties in satisfying their basic needs as those who are totally cut off from the working market<sup>44</sup>.

The economic model of the last decades has deepened the social gap to its historical maximum and it has been fundamental to discrimination practices in, at least, four aspects:

- *The strengthening of pre-existent traditional discrimination practices in our society*, because it is not the same to be poor than to be a poor-woman, an immigrant than a poor-immigrant, indigenous than poor-indigenous, etc.
- *The deepening of the relationship between racism and poverty* noted in the country’s matrices: indigenous, “cabecitas negras” (*black-headed*, a label used by dominant classes towards the people from mixed origins) and migrants from Latin-American countries that were also linked to

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in Ituzangó District (City of Cordoba), presented to the Health and Environment Secretariat in March 2005.

<sup>44</sup> The National Ministry of Economy published on the February 17<sup>th</sup> 2005 the average data for 2004 regarding salary situation: 54% of the workers of the private sector earn less than 700 pesos a month (without taking into account social security and health care discounts), what does not reach to cover the whole family estimated budget evaluated in December of 2004 as of 740 pesos. The official statistic does not include workers that are not legally hired and that receive 50% less than the ones that are formalized. Source: *Clarín*, February 18<sup>th</sup> 2005.

poverty from the origins of our Nation-State after the colonial extermination. This has been pronounced during the last years due to the increase of poverty in which people live because of the rise of discriminatory practices against them generated as a consequence of the lack of employment and opportunities that turn them into suitable “scape-goats” for the imposed common sense. The old racism of biological type seems to be easily articulated with class prejudices of middle and upper classes.

- *The turning of the “poor” into a specific subject of present discrimination.* Unemployed people and poor workers have become target of daily discriminatory practices, such as “cliental” access to welfare plans and aids on behalf of local officials; cut off from essential services for lack of resources; or mistreatment suffered in public institutions (schools, hospitals, administrations, etc.), where they are classified by stigmatizing characteristics in order to avoid payment. In the same sense, many aged adults whose families cannot support them are allocated in psychiatric institutions to withhold them from becoming homeless people. On the other hand, “cartoneros”<sup>45</sup> and “chicos de la calle”<sup>46</sup> are expelled from certain urban areas accused of making the city look dirty and scaring away tourism.
- *The criminalization of poverty.* Jails of Argentina are crowded with people pushed into committing felonies because of their situation of poverty – in their great majority without a job – and without possibilities of paying to make their law assistance more agile. Lack of possibilities of social insertion pushes them into eternal reincidence. Denounces have been received for arbitrary detentions due to “portación de cara”<sup>47</sup> (testimonies talk here about an interrelationship between ethnic characteristics and social conditions) and for the death of youngsters in areas of urban poverty on behalf of police members that is characterized as “happy triggering”. It is now frequent the relation in the collective imaginary of well off social sectors between “poor” and certain labels such as “villero” (from the shanty towns), “negro” (black), thief, prostitute or drug addict. Recent events related to the issue of “security” exemplify this problem.

<sup>45</sup> [TN. People of all ages that collect recyclable materials (paper, cardboard, etc.) from the streets for selling.]

<sup>46</sup> [TN. Children that live in the street.]

<sup>47</sup> [TN. Due to people’s looks.]

# STATE AND SOCIETY

## ■ State

A comprehensive – wholly dimensioned – interpretation of the first article of the Universal Declaration of Human Rights demands us to place ourselves at the half of the XX<sup>th</sup> century, a moment in which the United Nations stated that *“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”*. An understanding of the depths of this concept – in this new millennium underlined by post-modernity and neo-liberalism – obliges us to remember that its adoption was given at the aftermath of the moment in which the world outlived the horror of two World Wars.

The 1948 statement that every human being is born free and equal was a response to the advances of theories that supported “race superiority”. Consequently, Nations recognition and support to human rights meant the building of a new paradigm of equality in *dignity* and *rights* facing any type of discrimination. The foundation of the current construction of human rights concept emerges from the dictate given by Nations of the world to the Society of the Nations, in the first place (1920), and afterwards to the United Nations (1945). This dictate basically implies universal recognition – beyond any ruling regime – of a set of rights that the States are obliged to respect and guarantee.

The construction of that horizon led us to ulterior developments in human rights. These developments were first based in their diversity, and then in their integrity. Universality, regarding not only the States recognition but also national and supranational punishment to their violations, can now be added.

Human beings enjoy human rights that can be opposed to any State, regardless of political-institutional regimes. The State, on the other hand, is

obliged to guarantee all human rights through active policies, rectifying actions or omissions harmful to human beings.

Furthermore, the current articulation of the human rights concept emerges from a States' delegation of sovereignty; delegation that consists in a limitation of the community of the Nations, gathered under of the United Nations' framework, imposed to the States since 1945.

The old conception of sovereignty as a condition-free power within the limits of a State territory has long been relativized in political doctrine. Such a State power has been limited by the growth of interdependence on an international level and by the developments in the fields of the international law and human rights.

It is significative that whilst the Universal Declaration on Human Rights states every article recognizing the rights of the people (by stating that *Everyone is entitled to all the rights and freedoms..., Everyone has the right to life..., No one shall be held in slavery or servitude...*), Conventions determine State obligations establishing that *Each State Party undertakes to engage....* These different formulations imply that at the moment of ratifying conventions, States accept the obligations that emerge of the recognition of the fundamental human rights.

When analyzing racism we have established the ways and historical modalities of the phenomenon. From the standing point of any State, discrimination – as a typical behavior that aggravates the principle of equality – constitutes a violation to human rights; behaviors that tend to repair preexistent differences or imbalances are excluded from the concept.

It is in this sense that – when studying the problem of racism – Foucault stated that *“One of the massive transformations of the law of the XIX century consisted not exactly in substituting, but in completing that old right of sovereignty – to give death or let live – with a new right that will not erase the first but would penetrate it, pierce it, modify it. A right or, furthermore, an exact opposite power: the power of letting live or letting die. (...) Race, racism are the condition to make murder acceptable in a society of normalization. (...) When I say to give death I am not simply referring to direct murder, but also to all that can be an indirect assassination: the fact of exposing to death, to multiply the death risk for some, or plainly, political death, expulsion, rejection”*<sup>48</sup>.

This double dimension in which the State becomes responsible – by

<sup>48</sup> Foucault M., *Defender la Sociedad*, FCE, Buenos Aires, 2000, pp. 218-231.

action or omission – turns out essential when analyzing discrimination in Argentina. The specific way in which the discriminatory matrices function nowadays are to be analyzed in detail in each Institutional Field of this Plan. It is nevertheless appropriate to stress that, following a classic althusserian definition<sup>49</sup>, the basic manner of functioning of these dimensions is articulated by two modes of State action: repressive and symbolic action.

The first refers to every institution that because of its function makes primarily use of the “legitimate violence” allocated to the State, especially to the Security Forces (armed forces, police, and gendarmerie).

The symbolic mode refers to the set of ideas and representations that are materialized within certain institutional discourses (educative, judicial, cultural, informative, etc.). Although these institutions work in a relative autonomous way, Nation-States use them in the construction of the “othernesses” that displays what is bad and should be repudiated in opposition to the desired social model. We shall anyway take into account that this system of ideas does not work in a monolithical way for there are other symbolic configurations that always exist while claiming and struggling to be incorporated.

Discrimination, as has already been stated, is a multifaceted phenomenon dependent on historically rooted complex matrices. It is hence imperative for Argentina to adopt substantial and interdependent measures addressed to give full effect to the Universal Declaration recognition, hence accomplishing the obligations attained at the moment of ratifying Conventions.

Throughout this Plan two prime measures oriented to the elimination of all forms of discrimination will be underlined: to incorporate to the federal competence of situations related to any discriminatory act, and to elevate any act of discrimination to the status of felony.

Regarding federal competence, law N 23.592 on discriminatory acts requires to be reformed with the aim of submitting to federal jurisdiction any act of that nature, including current provisions of the law regarding people that are part of organizations or make propaganda or incite hate or violence<sup>50</sup>.

<sup>49</sup> Althusser L., “Ideología y Aparatos Ideológicos del Estado” en Zizek S., *Ideología*, FCE, Buenos Aires, 2003.

<sup>50</sup> The International Convention on the Elimination of All Forms of Racial Discrimination

Regarding specific punishments, it is of vital importance to reform article 2 of law N 23.592; hence allowing to declare punishable: publicity of ideas based on racist and/or discriminatory principles; incitement to discrimination, acts of violence or incitement to commit acts of such a nature against any person or group of people; and assistance to any kind of racist and/or discriminatory activities, including funding. The need of fulfilling processes that started at a supranational level is also in need to be underlined. The ratification of Conventions is going to be treated in the chapter on "Justice Administration and Legislation". A complete protection from discriminatory acts requires the recognition of the competence of the Committee for the Elimination of Racial Discrimination to receive and examine individual claims of alleged victims of human rights violations by the State. This measure requires a particular declaration, establishing a competent national body for reception and examination of petitions of people or groups of people. An authorization as such a nature was recognized by the ratification of the Optional Protocol to International Covenant on Civil and Political Rights.

## ■ Society

When analyzing discriminatory practices in Argentina we shall take into account that the matrices that gave birth to the Nation-State impacted society in diverse ways throughout our history. As it has already been underlined, evolution and changes in the constitution of civil society implied the development of new forms of discrimination that live along with prior discriminatory modes.

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states in article 2 that "States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation; (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations; (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists".

Since the XIX<sup>th</sup> century to our days, the matrix of construction of “the national” established a certain bond with a changing “otherness”. In this process, society incorporated those configurations through different mechanisms. Social practices and complex processes of affirmation of different human groups generated processes of valuation, exclusion and/or annihilation of other social sectors.

While the State currently sustains matrices articulated from the foundational period, society still articulates overlapped discriminations, reproducing and reinforcing “common senses”.

Hence, diverse paradoxes arise. On the one hand, the ones that are excluded organize themselves in neighborhoods, cooperatives, and popular canteens seeking strength through union, while repeating some cultural patterns that tend to victimize them. On the other, middle and upper sectors tend to shut themselves into real *ghettos* of selective access.

From this point of view, Argentinean society then marches towards the isolation of social sectors. Wealthy people tend towards private security and private neighborhoods, demanding at the same time more and stronger punishments – for example, the enlargement of punishments to misdemeanors that were not being punished with imprisonment before as well as discretionary attributions for the police so as to let them arrest people during longer periods before notifying the judge and punishments that imply loss of freedom to those behaviors that are misdemeanors – that are being implemented under a perspective of security that opposes to human rights.

Under globalization’s hegemony, “*the equals*” (those that constitute their identity on the base of the exclusion of the diverse due to economic or symbolic belongings) seek for mutual identification. The search of the “equal” gives them guarantee of tranquility, resealing exaltation of individualism and disappearance of basic values of society that treasures solidarity.

Bauman<sup>51</sup> examines this new notion of community where “*community signifies sameness, while sameness means absence of the Other, specially the other that is “obstinately other”, capable of unpleasant surprises and maliciousness precisely due to its difference. In the figure of the strange one (who is not only the unknown but also the alien, the one that is “out of place”), fears of uncertainty, present in the whole experience of life, find their so much looked for incarnation and hence welcomed*”.

<sup>51</sup> Bauman Z., *Comunidad*, Ed. SXXI, Buenos Aires, 2003, pp. 136-137.



At the same time – and also as a product of the depth of the political and economic crisis of 2001 – other sectors of society oriented themselves towards participation and social commitment. The taking over of factories, the organization of cooperatives and neighborhood canteens are some of the modalities of a struggle that emerge in face of a crisis of representation and State “withdrawal” from responsibilities and functions.

From this perspective it can be stated that there is a memory of the struggles held in the past and it is necessary to stress the canalization of sector and group struggles – under the mode of civil associations – in replacement of the political activism that characterized the 70’s. today in Argentina, about 6 million people are part of non-government organizations.

These new social actors are to be taken into account although there are cases in which their action reproduces the cultural values of discrimination. The general confusion of not working for inclusion can be seen in certain groups. On the contrary, they seem to provoke the making of *ghettos* that deepen the same discrimination situations that are even perceived in the names of some NGOs<sup>52</sup>.

Habermas<sup>53</sup> considers that social movements alter the fields of the communicative competencies already established and irrupt to create a new constellation of communication, recognition and values in society, a change in the grammar of the life style of a political culture.

Social organizations are to have a main role in the construction of an alternative thought to the hegemonical. While old ways of making politics are in crisis, these organizations canalize social unrest by rescuing ways of participation different to political party confrontation<sup>54</sup>. In this sense, Bourdieu<sup>55</sup> underlines that *“in the moment in which great utopias of XIX<sup>th</sup> century have unfolded their perversion, it is urgent to create the conditions for a collective work of reconstruction of a universe of realist ideals, capable of mobilizing wills without mystifying coincidences”*.

This collective work that is being imposed on us – the conception of an alternative to the hegemonic model: authentically democratic, based on respect to diversity – requires of the effort of both State and society.

<sup>52</sup> Interviews in La Plata, 2004.

<sup>53</sup> Habermas J., “New Social Movements” in *Telos*, N° 49, New York, 1981.

<sup>54</sup> Ravenna H., *El rol de las Organizaciones no Gubernamentales de Derechos Humanos en los Procesos Democráticos Latinoamericanos*. Segundo encuentro por un pensamiento en la Argentina (CTA): “Democracia, Estado y Desigualdad”, 1999.

<sup>55</sup> Bourdieu P., *Intelectuales, política y poder*, EUDEBA, Buenos Aires, 2003, p. 185.

# III | **Diagnosis**

## Areas of Analysis

# AGE

## ■ Childhood and adolescence

Boys, girls and adolescents represent 25% of the total population of Argentina. Thirteen million people are under 18 years old whereas 50% amongst them are poor<sup>56</sup>.

Discrimination against children and adolescents is based on two mayor sources. On the one hand, there exist certain conceptions – basis for the current normative system – that define children and adolescents as their parents’ properties: they are considered as objects of social and judicial protection but never as subjects of rights. On the other, the economic and social crisis locates a great number of children and adolescents in a situation of poverty and indigence, lack of access to health care, to education and housing. It keeps them from enjoying rights that can assure them a life in dignity and the possibility of having a life project facing the future.

Ideological and cultural bases of discrimination against girls, boys and adolescents finds its roots in a patriarchal notion that understands the *pater familiae* as owner of his property as well as of the lives of women, sons, daughters and servants. The concept of *patria potestas* is founded on this notion. Even though this notion has evolved – notions such as “it is with blood that the ideas are internalized”<sup>57</sup> or ideas as that children are “soft clay to be molded” and that they are potentially dangerous if their will is not corrected or “reformed” have been abandoned – many remnants of these ideas are still present in laws and institutions.

<sup>56</sup> Ministerio de Trabajo, Empleo y Seguridad Social, *Contextualización de las condiciones sociales asociadas a la problemática del trabajo infantil en la Argentina*, Buenos Aires, 2002, p. 36.

<sup>57</sup> [TN. In the original, “la letra con sangre entra”.]

It was only at the beginning of the XX century that the notion of infancy was born as a differentiated stage from adulthood. At the beginning of the century, the importance of affection in raising children was seen as an important element of a *healthy development* in which children could express their needs. Towards the end of XX century, the criterion that established that boys, girls and adolescents are *developing persons* and subjects of rights was consecrated.

Argentina signed the Convention on the Rights of the Child (law N 23.849), ratified it in 1990 and gave constitutional status to it in the Constitutional Reform of 1994<sup>58</sup>.

### Law of Patronage

Argentina lacks, nevertheless, a corpus of integral policies for the full development and protection of childhood. Furthermore, the current judiciary regime is contrary to the concept of the above mentioned Convention, to the idea of the children as subjects of rights. The Law of Patronage (N 10.903), dating from 1919 and based on the doctrine of the “irregular situation”, is still being applied. This law states that “minors” are objects of “judiciary protection”<sup>59</sup>. In the same context, the “Minority Criminal Regime” – based on laws N 22.278 and N 22.803 that were sanctioned during the 1976-1983 Dictatorship – is also still supported.

The notion of the “minor” is the basis upon which the doctrine of the “irregular situation” was built. According to this doctrine, *minor* is every person under 18 years that is *under material or moral danger*. That is, every underaged that is abandoned, or that attends to *immoral places*, or that is incited by his/hers parents to perform acts that are against his health, or that prowls or wanders as well as those who break the law or are imputed of committing a felony. Faced with these situations, this doctrine estimates that the State has the *paternalistic tutelary function*, carried out through the tutorship of a Judge for Minors, who is to perform the role of a “good family father”.

This notion, according to which the State *re-educates* and *re-socializes* the child by the immediate separation from the sphere that *contributes to*

<sup>58</sup> National Constitution, article 75, clause 22.

<sup>59</sup> UN Committee on the Rights of the Child, *Examen de Informes de los Estados: Observaciones a Argentina, 31 período de sesiones*, October 2002.

*a deviated upbringing*, led in the practice to the *criminalization* and *institutionalization* of a considerable mass of boys, girls and adolescents: Judges for Minors withhold discretionary means by which they are capable of keeping boys, girls and adolescents under 21 years old secluded in “Minority Institutes”, hence violating the fundamental rights and guarantees established for every person under the state of right. This is probably the most serious discrimination practiced in Argentina against boys, girls and adolescents.

The notion of *minors subjects of tutoring* lacks the possibility of differentiating among variable situations, such as the portions of children that are victims of crimes (raped or obliged to prowl or prostituted children) from those who have committed felonies (robberies, lesions, homicide) and from those whose basic needs are not fulfilled (children abandoned by their families or without family, etc.) and that require protection.

The National Council of Childhood, Adolescence and Family (CONNAF) – created by decree 1606/90 – is the administrative organ that executes the tutoring measures dictated by the National Judicial Power. Its function is to execute the institutionalization of minors that are object of State tutoring and supports – but also is supported – within the framework of the Patronage system. However, the CONNAF executes almost its whole budget in the City of Buenos Aires and in the Province of Buenos Aires, hence creating inequality with the other provinces. This institutional policy, lasting almost a century, has generated a staff of functionaries and very rigid specific interests, hard to remove and resistant to the required changes in order to achieve a full respect for the rights of boys, girls and adolescents in Argentina.

Whilst this notion remains present in the normative and institutional orders related to infancy and is not revised in depth, discussions over the subject will be based on fallacies. These tend to pretend that the age of criminal imputability or the lack of resources, personnel and institutions to seclude minors are central problems in order to solve the infancy issue.

The situation of the “Minority Institutes” is a subject that cannot be underestimated when addressing discrimination against youngsters and adolescents. As a part of a project of visiting Minority Institutes throughout the country that lasted several months, one organization interviewed stated the following: “*There are over 100 children and adolescents in a possible conflict with the criminal law that remain detained in subhuman conditions*”

*under the provincial government's responsibility for lapses that no liberal criminal law of the world would even authorize for adults*"<sup>60</sup>. All the interviewed institutions agree that the "Institutes" do not fulfill their function of protecting, rehabilitating, educating and training youngsters, but on the contrary they are generally the starting point of a criminal career as an outcome of the resentment that the received mistreatment generates<sup>61</sup>.

The Law of Patronage and Minority Criminal Regime leads the country to the absurd situation by which people under 16 years old – non imputable by law – end up being imprisoned and aggravated by the fact that this happens for unknown periods of time, with no due process and without sentence. In the sphere of the Federal Justice, current Minority Counselors are still applying the above mentioned "irregular situation" doctrine. The outcome is that youngsters who should have been defended end up interned in institutions and deprived of freeform under the initiative of the "non-criminal defendants". In most cases, when children enter the police-judicial system they only leave it at the age of 21 with irreversible wounds in their subjectivity.

To focus the debate on the imputability age is to emphasize the almost intrinsic culpability of boys, girls and adolescents without referring to nor analyzing our present society. Furthermore, this focus that obliterates the infancy protection takes us back to XIX century situations or to the 1976-1983 Dictatorship days.

One important difficulty – derived from the lack of integral protective policies and of the sustained application of the Law of Patronage and the Minority Criminal Regime – is that in a great number of provinces the detention of minors takes place in police stations. A study carried out by the previously quoted non-governmental organization found that *"there were almost 146 detained children and adolescents between 8 and 19 years old in police dependencies of the province. The permanence there reaches 120 days, and a longer period of detention was detected for the younger children. This irregular situation is rooted in the eighties"*<sup>62</sup>. This type of irregular detention in police stations withholds an inadequate attention to children

<sup>60</sup> Interviews in Córdoba, 2004.

<sup>61</sup> Interviews in Córdoba, Mendoza, Río Negro and Salta, 2004.

<sup>62</sup> Interviews in Córdoba, 2004. Similar data can be found in the Complementary Report of the Child and Adolescence NGO Group presented to the UN Committee of Experts on the Rights of the Child in September 2002.

and adolescents, simultaneously limiting their rehabilitation possibilities and their reinsertion to social life. The youngsters remain without due process, without guarantees or legal assistance of any kind<sup>63</sup>.

### Minority Institutes

Living conditions of the child and adolescent population confined in Minority Institutes are also very serious: *“spaces are overpopulated, cells are small and are crowded. Children as young as 8 years old share spaces with older ones. The furniture, when there is any, is deplorable and blankets are insufficient. There is insufficient light and ventilation. Toilets are a wrecked and they lack hot water. Food is scarce, and youngsters are sometimes not taken out to the courtyards to workout or to see the sun. They do not receive educational services, little medical or psychological assistance, if not any at all”*<sup>64</sup>.

Institutions' personnel is a serious issue that should be addressed. They are generally police agents without penitentiary training and that have no training at all in working with underaged people. Numerous cases of abuses – such as, retention of food brought by relatives, physical violence, mistreatment, illegal submission, etc. – exerted by this personnel have been reported to us. Interviewees state that repeated suicide attempts, self-harmings and other dangerous protest actions occur due to mistreatment. During the last years, riots, protests and several deaths have been registered in several provinces throughout the country<sup>65</sup>.

Even though many provinces are undergoing processes of legislation adjustment and dejudicialization, the above mentioned scenario and the living conditions in Minority Institutes was repeatedly mentioned during our interviews<sup>66</sup>.

The situation of childhood in Argentina has motivated several United Nations organizations – such as the Committee on the Rights of the Child, the Committee against Torture and the Working Group on Arbitrary Detention – to express their concern regarding the children deprived of freedom in our country and to recommend and urge the country to modify national legislation.

<sup>63</sup> *Idem.*

<sup>64</sup> *Idem.*

<sup>65</sup> *Idem.*

<sup>66</sup> Interviews in Buenos Aires, Córdoba, Mendoza and Salta, 2004.

## Childhood and poverty

In the aim of seeking answers to overcome marginalization and childhood discrimination, we must closely examine the living conditions of the majority of the children and adolescents of our country. This is to be characterized by a marked decline in the access to economic, social and cultural rights for children and adolescents. The whole juvenile and infant population has directly or indirectly suffered the consequences of productive and wealth concentration, unemployment and labor fragility processes<sup>67</sup>.

When socio-economic indicators are analyzed, we come to realize the exclusion situation that young people undergo. The Permanent Housing Survey (held by the National Institute of Statistics and Census) shows that, in October 2001, 70% of the children and adolescents were affected by the conditions of critical overcrowding, and 28.8% lacked of efficient sanitary services in the 28 urban conglomerates included in the study<sup>68</sup>.

Between 1991 and 2001 the percentage of people under 18 years that lived below the poverty line rose to 72.8% whilst the percentage of indigence quadruplicated (+322%). The greatest increase was registered amongst adolescents between the ages of 15 to 17<sup>69</sup>.

The highest rates of poverty and indigence of people under 18 years is concentrated in the north-western region (61.2% under the poverty line, 23% under the line of indigence), the north-eastern region (71% under the poverty line, 37.3% under the line of indigence) and metropolitan region (GBA), where 48.2% survive under the poverty line and 46.6% under the line of indigence<sup>70</sup>.

Other sources indicate that 60% of the people under 18 years and 53.1% of the people under 15 years are poor in our country: 1,486,000 children (out of the 2,800,000) live in families that cannot afford to buy food or to pay for basic services. In addition, school drop-out levels and the lack of family support is in those cases seriously worrisome<sup>71</sup>.

<sup>67</sup> Naddeo M. E., *Declaración presentada en el Plenario del Consejo de los Derechos del Niño*, mimeo, May 2004.

<sup>68</sup> Source: INDEC – EPH, October 2001.

<sup>69</sup> Cieza D. et al., *Informe preliminar sobre la crisis social y la situación de la niñez, adolescencia y ancianidad en Argentina*, Passaporto dei Dritti, Instituto Nazionale di Assistenza, Buenos Aires, 2004.

<sup>70</sup> *Idem*. Based on INDEC, *EPH Series de Análisis Social*, Buenos Aires, May 2003.

<sup>71</sup> Data provided by Expert Dr. Norberto Liwsky during an interview held with the team in Buenos Aires, 2004. Dr Liwsky is a member of the Committee for the Rights of the Child.



## Education

Youngster's school attendance and school failure are directly related to poverty and children labor. SIEMPRO underlines that 72.4% of active youngsters (occupied and under-occupied) do not attend school<sup>72</sup>. "*Children that work generally have weaker school results*"<sup>73</sup>. Even though school attendance rates are relatively high in Argentina, there is a tight correlation between poverty and lack of schooling as recorded by official data: in 2002 it was estimated that 500 thousand children did not work nor study<sup>74</sup>.

## Child mortality

Even considering that in the long term (since 1970) the rates of child mortality for ages under 1 had declined for the totality of the country, it has to be noted that during the last years it has been rising in provinces such as Formosa (from 26.9% in 1999 to 28.9% in 2001) and Tucumán (from 19.8% in 1999 to 24.5% in 2001)<sup>75</sup>. At the same time, in 2002 the amount of boys and girls under the age of 1 that died due to avoidable reasons has risen in the whole country, hence widening differences between jurisdictions with greater or lesser resources<sup>76</sup>.

It can be stated that the full development of boys, girls and adolescents is directly affected by the lack of the basic alimentary resources, as well as the lack of access to sanitary services and adequate education.

## Child labor

Our country has ratified the ILO Convention 138 on Minimum Age (1973), that establishes it to be of 18 years for labor. Nevertheless, the old legal system is still applied and the age limit for child labor oscillates between 14 to 15 years old. In Argentina public policies are not focused on the eradication of child labor, although the Ministry of Labor, Employment and Social

<sup>72</sup> Source: SIEMPRO, 2001. Based on the Colectivo de Derechos de Infancia y Adolescencia (2002).

<sup>73</sup> Feldman S., "Los niños que trabajan en la Argentina" in Feldman S., García Méndez and Araldsen H., *Los niños que trabajan*, Unicef Argentina, Buenos Aires, 1997. See also, *La Nación*, October 9, 2000.

<sup>74</sup> Ministerio de Trabajo, Empleo y Seguridad Social, *op. cit.*

<sup>75</sup> Source: Estadísticas Vitales, Ministerio de Salud y Acción Social, 2001.

<sup>76</sup> Source: INDEC, 2003.

Security has established the National Committee for Child Labor Eradication (CONAETI) and whilst the Human Rights Secretariat has launched a media campaign with that same aim. This situation is contradictory for a country in which adult unemployment is very high and in which all children should be studying.

Child labor under the age of 14, although extended, is kept hidden in illegality and there exist very few studies on the labor conditions of this population in Argentina. Some organizations state that there are about 2 million children working, many of which are under deplorable conditions of exploitation<sup>77</sup>. Child labor turns out to have critical consequences for the physical and psychological development of children: it affects their health while reducing their educational perspectives and setting a mortgage on their future, hence catching them in a circle of poverty and social exclusion reproduction.

### **Gender and sexual education**

In Argentina, the lack of sexual education in schools bring up the birth of 110.000 babies whose mothers are between 10 to 19 years old. The opposition to the inclusion of these subjects is due to the lobbying of conservative sectors of society that allege that this would imply an incitement to reduce the sexual initiation age. However, a research on adolescent population of Argentina shows that the average age of sexual initiation is around the age of 15. This would indicate that many boys and girls become sexually active in younger years. According to this report, 34,4% did not take any type of precaution to avoid pregnancy during the first sexual relation<sup>78</sup>.

In this case, gender discrimination is addressed to adolescent women for which parenthood frustrates their physical, social and educational development. The motives alleged by the group that did not use any contra-ceptive methods during their first sexual relation are the following: men refusal in 33,3% of the cases; 32,6% cases in which lack of information was alleged; and 5,1% that corresponded to the fact that their sexual initiation had been by rape.

<sup>77</sup> Source: Secretaría de Derechos Humanos del Ministerio de Justicia y Derechos Humanos, 2004.

<sup>78</sup> Sociedad Argentina de Ginecología Infante Juvenil (SAGI), based on the article "Estudio sobre la población adolescente en la Argentina" in *Clarín*, November 11, 2004.

The same sample shows that 33% of the adolescent women were drop-outs, that only 58% had completed high school and that 20% stated they did not study nor work.

## Violence

Family violence and home sexual abuse is another expression of discrimination against boys, girls and adolescents. This violence is based on power mechanisms practiced by adults in patriarchal family relations, in which the father portents power upon the mother and the children. In many occasions, mothers mistreat their children whilst they are maltreated by their husbands, as a part of a chain of power within the family that affects the one most vulnerable. Violence and family abuse against children is verified in all social classes and different relatives or related adults participate in it.

To “correct” children by parental physical violence is still legitimate in our culture, in the same way that physical punishments by teachers was approved in the past. The only violence that was seen as not proper was the one which caused “too much harm”. Nevertheless, these social behaviors are being currently revised and teachers’ violence upon students is not accepted any longer. There are, however, daily cases of children that are mistreated and/or are sexually abused – or even killed – by their parents or by people that live with them. There is still a lack of systematic polices of children mistreatment detection in schools and hospitals. Lately, telephone “hotlines” to denounce children mistreatment have been inaugurated in some provinces. In any case, there are none massive campaigns of delegitimization and prevention of physical and psychological violence against boys, girls and adolescents, nor to protect their rights of living free from violence.

## Boys and girls in street situation

Family violence and lack of family and institutional support create difficulties for young boys and girls to imagine life projects, pushing in many occasions times young people to seek survival in the streets. Boys, girls and adolescents in street situation are object of all kind of abuses and mistreatments. Interviewed children with *street stories* described their lives: several had been arrested due to “for their looks” (*portación de rostro*) whilst a

lot of them stated *“rich kids call us shitty negroes”* (*“los careta nos dicen negros de mierda”*)<sup>79</sup>.

The words of a 12-year-old girl are eloquent enough about the situation of childhood in the street: *“when you are without parents, the others take advantage of you, and the judge interns you [she mentions the place where she was interned and from which she escaped]. Children are far from being protected in that place. (...) Moreover, members of the personnel give you marijuana cigarettes just to keep you from bothering”*<sup>80</sup>.

Mistreatment in police dependencies and diverse institutions (minority institutes, colonies and hospitals) characterizes the experience of the interviewed children. Many of them had escaped from these institutions *“so as to be in the street”* and *“because, for example, in the hospital they keep you drugged all day long”*<sup>81</sup>.

Others told the experience they suffered in their city during a massive razz for “touristic” reasons in 2002. *“To clean the streets out of prowling boys and girls, and of those that wiped car windshields, they took all the children away from the street and kept them imprisoned. We felt as if we were delinquents”,* they said<sup>82</sup>. This statement shows how poor children are criminalized and depicts the indifference of some social sectors and official institutions in the search of solutions to the profound problems that these actions refer to.

In the same episode, a girl of 16 tells she was taken to a cell of the minority police stations with her little brother, who was 3 years old: *“they did not allow you to use the restroom, (...) they put youngsters and adults together and then they took you to the forensic”*<sup>83</sup>.

For those children who are in street situation, schools are not supportive spheres. An interviewed adolescent stated how he feels discriminated and provoked by the school preceptor, where he also receives the insult of *“shitty negroe”*. This 16 year-old boy was arrested “for his look” when heading to school: *“school doors are closed for you when they find out you have a story of street, drugs and violence”*<sup>84</sup>.

Many of the children in street situation make use of inhalable sub-

<sup>79</sup> Interviews in Mendoza, 2004.

<sup>80</sup> *Idem.*

<sup>81</sup> *Idem.*

<sup>82</sup> *Idem.*

<sup>83</sup> *Idem.*

<sup>84</sup> *Idem.*

stances that numb them so as to stand the cold, and forget about abandonment and abuses. This drug – known as “glue” (*pegmento*, adhesive substance) – that is used by poor children throughout Latin America and that destroys the osier medulla and cerebral cells, is confirmed to be used in our country. Boys, girls and adolescents point out that they feel the rejection and the lack of solidarity from passer-byers: *“when you are drugging in the street, they look at you with despise and call you ‘fucking addict’”*. This is of one of the most painful aspects of their situation for many of them. When asked about how they would like people to react, a 16 year-old girl stated that: *“I would like people to approach me. (...) I would like them to talk to me”*<sup>85</sup>.

There are non-governmental initiatives in several provinces that support children and adolescents in street situation. Some institutions have a good coordination with local police, in order to get the children derived to them when they are found to be by themselves. These are, nevertheless, punctual initiatives that turn out insufficient to face the problematic and generally lack the necessary official support and control<sup>86</sup>.

Some of the interviewed organizations have a good diagnosis of the poor neighborhoods from which the children come and of the ways in which they protect themselves in little groups. Their perception is that *“the number of children in street situation has been growing in the last years and the age average is decreasing”*. They explain the discrimination mechanisms that operate within the population towards these children: *“they are discriminated for their tattoos, for the color of their skin or because they come together riding their bicycles. People discriminate them for considering them delinquents or their accomplices”*<sup>87</sup>.

Assistencial policies regarding boys, girls and adolescents also vary according to provinces or municipalities. There are, in some provinces, good public and non-governmental initiatives to protect children victims of violence or abandonment. Nevertheless, the budget is not enough or is administrated incorrectly.

Youngsters and children from secluded sectors usually identify themselves with cultural products that express the reality in which they live in. Moreover, they transform the “stigma into an emblem”<sup>88</sup>, claiming for

<sup>85</sup> *Idem*

<sup>86</sup> Interviews in Río Negro and Neuquén, 2003.

<sup>87</sup> *Idem*.

<sup>88</sup> Goffman E., *Estigma* Amorrortu Editores, Buenos Aires, 1980.

recognition. An example of this is the *Villera Cumbia*<sup>89</sup>, a music that identifies them for it expresses their reality with lyrics of marginal content. The TV series called *Tumberos*<sup>90</sup> also provoked identification of different nature amongst a large number of poor children and adolescents. Nevertheless, several of these contents subscribe to the ready-made vision society holds of them: it gives them back an image that strengthens the notion that there is no destiny for them besides the street, criminality or prison. Changing this naturalization of the social situation is imperious if we are willing to let these children develop their potentialities as human beings

### **Sexual exploitation of boys, girls and adolescents**

The most brutal aspects of discrimination towards children and adolescents is displayed in sexual exploitation and trafficking for the purpose of prostitution and sexual tourism. In 2001, the ILO Convention N 182 on the Worst Forms of Child Labor was ratified by Argentina and the National Commission for the Elimination of Child Labor was created within the scope of the Ministry of Labor, Employment and Social Security. There is an immense work to be done in the field since infantile sexual exploitation commerce is based on power relations practiced by those people – including clients – that profit from the bodies of boys, girls and adolescents. Systematic information on the subject is scarce and programs and concrete actions in the prevention, investigation and punishment of the criminals is even more rare.

Quantitative data is difficult to gather due to the clandestine nature of the trafficking of underaged people with sexual exploitation purposes. However, a study by UNICEF on “Prostituted Childhood. Study on commercial infantile sexual exploitation in Argentina” shows the importance of the problem and confirms “*the presence of prostituted children and youngsters of both sexes, indoors (bordellos saunas, clubs, etc.), in open places (discos, pubs, agencies, etc.) or in the streets*”<sup>91</sup>. Even though quantitative estimations are, as it has been stated, obstaculized due to clandestinity and the diversity of the modalities assumed by this type of exploitation, this study

<sup>89</sup> [TN. Cumbia of the shanty towns].

<sup>90</sup> [TN. Literally from the word ‘tomb’, making reference to incarcerated persons].

<sup>91</sup> Unicef Argentina, *La Niñez prostituida. Estudio sobre la explotación sexual Comercial Infantil en la Argentina*, Buenos Aires, 2001.

proved the existence of prostituted boys and girls throughout all the studied regions and under all forms of sexual exploitation.

Physical and psychological damages inflicted to underaged people due to sexual violence turns the practice into the most abusive and aberrant children discrimination form. Boys and girls exploited by trafficking networks face, on a daily basis, serious risks to their health, amongst them: exposition to HIV, sexual transmission diseases, unwilled pregnancies and drug addiction<sup>92</sup>.

### Postscriptum

Once the chapter was already finished, a tragedy took place during a rock show of the group called *Callejeros* in a place called *Republica Crogmanon*. The tragedy resulted in the death of 193 youngsters. This sinister evidenced the commercial exploitation to which children are subdued in the lack of scrupulous among businessmen and in the absence of proper State controls on the security of places in which young people gather. *"The lack of opportunities and the absolute lack of protection on behalf of the State are determinant factors that explain social mistreatment suffered by the great majority of the youngsters. (...) It was never this hard to be young"*, concludes researcher Marcelo Urretsi<sup>93</sup>.

*Please refer to proposals N 17, 23, 24, 25, 47, 48, 49, 54, 87, 88, 89, 90, 96, 97, 98, 99, 100, 101, 159, 164, 168, 180, 183, 184, 188, 195, 202, 209, 236 and 239.*

## ■ Elder adults

### Population dynamics: aging and discrimination

Even when the prolongation of human life – as result of scientific development – is one of the achievements of the XX century, it brings along challenges and discrimination situations for aged adults that many times are led to situations of discrimination.

Aging is a dynamical, gradual, natural and inevitable process in which

<sup>92</sup> *Idem.*

<sup>93</sup> *La Nación*, January 9, 2005.

changes at biological, corporal, and psychological level take place. It develops on a time foundation and it is limited by time as well. It is not a rigid stance but another step of growth of the human being as childhood, adolescence and adulthood are<sup>94</sup>.

A different image and a role of elder people is built in each social-historical context, thus valued in different manners. In many societies, elderly people are those who maintain the knowledge of their cultures for the experience they have accumulated along the years. *"Each time an elderly person dies, we feel as if our library was burnt down, for ours is an oral culture"*, point out aboriginal representatives in our country<sup>95</sup>. In those cultures, elderly people are respected and are taken care of.

The manner in which biological, psychological and social changes brought by the passing of time are elaborated depends on prior psycho-cultural facts. When a negative value is given to these psycho-social and corporal transformations, elderly people are relegated to a relation of subordination, whilst they are not seen as subjects of action, their autonomy is denied, as well as their social participation. In the great majority of the cases, elderly people are considered *"objects of care"*.

In our society, where human beings are valued for their productive capacity or their ability to accumulate material wealth, the paradigm to emulate is one of the strong and productive youth. On the opposite, aging and oldness has been loaded with negative signs and is labelled as sick, incapable and unproductive. On the basis of this negative stereotyped valorization, all forms of discriminatory attitudes and practices have been developed. These go from familiar isolating and insulting to the lack of respect in public places, mistreatment in the institutions and lack of public policies addressed to this moment of life of the human being. An example of this situation, image of the greatest outrage towards the elderly in our society, are the terribly long queues that under sun or rain retired people have to bear for hours when earning their pensions.

The aging of society is a result of the combination of the phenomena of lengthening life expectancy – product of scientific development and diminishment of mortality rates – and the lowering of fecundity. The population pyramid of our country shows an increase of the population older than 60

<sup>94</sup> Viguera V., *Educación para el envejecimiento*, Curso Virtual, Buenos Aires, s/f.

<sup>95</sup> Interviews in Buenos Aires, 2004.



years and a transformation in the conformation of the traditional family pyramid, with more grandparents than sons and daughters<sup>96</sup>.

In Argentina, the population over 65 years varied from 7% in 1965 to 13,3% in 2000<sup>97</sup>. The process of aging in the city of Buenos Aires is more pronounced than in the rest of the country: the percentage of elder people (17,2%) is superior to the percentage of youngsters (16,9%)<sup>98</sup>.

For the whole country, life expectancy at birth grew from 62,7 years in 1950-1955 (60,4 years for men and 5,1 for women) to 71 years in 1985-1990 (67,6 years for men and 74,6 for women). This trend continues to increase but with great differences according to social classes.

### **Work and retirement**

During the nineties, employment precarization and unemployment took place in Argentina. As a result, an enormous amount of elderly adults were left out of the labor market, many of which without the required age for retirement, while no social welfare was available for others. At the same time, those that accessed the retirement system find that the incomes are minimum and do not cover their basic needs.

Age has become the main element of labor discrimination for people in our country. Employment requirement ads usually exclude people over 35 years of age. The ever more steep differences between wealthy sectors and poor ones is projected with more strength on elder adults (lacking resources, excluded from society and without adequate public policies on behalf of the national government and provincial governments), thus worsening the levels of marginalization and discrimination towards the elder adults of the poorest sectors.

Multigenerational homes (where elderly people live with sons and grandsons) are more frequent in the poorest, rural and with more aboriginal population regions of our country. On the contrary, on urban areas, homes exclusively integrated by elderly people predominate<sup>99</sup>. In the same way, aboriginal elder adults are the ones with less previsionial coverage in the country.

<sup>96</sup> Cieza D. et al, *op. cit.*

<sup>97</sup> CEPAL, *Panorama Social en América Latina 1999-2000*, Buenos Aires, 2000, pp. 112-113.

<sup>98</sup> INDEC, *Aquí se cuenta. La población de Argentina envejece*, Revista Informativa del Censo 2001, N° 6, Agosto 2003.

<sup>99</sup> CEPAL, *op. cit.*, p. 114.

A high percentage of the elder men (between 70% to 85%) live in couples, while only 55% to 60% of the elder women claim to be married or united. This difference obeys to a combination of feminine widowhood, higher life expectancy rates and that men tend to re-unite after separating or widow<sup>100</sup>. Elder women have less scholarly, less financial experience and less access to legal assistance than men, hence a situation of a greater vulnerability of women and poverty feminization takes place for this group<sup>101</sup>.

Elder adults of the poorest sectors, particularly women, are the most exposed to suffering marginalization and social and economic discrimination in our society.

The term "retirement" (in Spanish, *jubilación*, derived from the word *jubililo*) implies a recognition and a recompense for long years of work<sup>102</sup>. In our country – as in many others – retirements, when existing, provide less than salaries and constrain life conditions. Concepts such as "passive class" or "retirement" locate people outside the labor market, away from production. These notions are extensive to all other realms of life and strip elder adults out of all active and creative potential in sexual and affective life, as well as in any other family, social, labor, professional or political scope, etc.

In Argentina, the percentage of people over 65 years that received retirement and pension incomes was of 77% in 1997<sup>103</sup>. The number of people receiving retirement and pension funds cannot, nevertheless, conceal the fact of acknowledging that these are exiguous and cannot cover the basic needs.

There is a significantly smaller percentage of people with Social Security coverage in rural areas and outside major urban districts. According to SIEMPRO, there are currently around 500,000 people over 70 years without Social Security coverage in the 28 urban conglomerates studied by EPH (not including the ones comprised in the last wave). Provinces with less Social Security coverage for people over 70 years are: Corrientes (34,9%); Misiones (31,6%); Jujuy (31,3%); City of Buenos Aires (26,8%)<sup>104</sup>. This situa-

<sup>100</sup> UN Información Center for Argentina and Uruguay (CINU), "La mitad de los adultos mayores carece de ingresos en América Latina y el Caribe" in *Comunicado de prensa de CEPAL*, March 23, 2004.

<sup>101</sup> Cieza et al., *op. cit.*

<sup>102</sup> See: "¿Jubilados o retirados?" in El Portal del Adulto Mayor, [www.portalgeriatrico.com.ar](http://www.portalgeriatrico.com.ar).

<sup>103</sup> CEPAL, *op. cit.*, p. 121.

<sup>104</sup> Source: SIEMPRO, based on data provided by INDEC-EPH, October 2002.

tion worsens when applied to people over 65. Other data recollections pointed out that 1,700,000 people were without retirement or pension in 1999<sup>105</sup>.

The main objective of retirement systems is to protect population from aging risks, death of the home sustain (for partners and minor and/or handicapped sons and daughters) or disability<sup>106</sup>. Our retirement system started to display deficits during the sixties, as a result of population aging, bad administration, progressive labor precarization (fall of real salary, growth of informality and unemployment) and fiscal evasion. During the nineties, the retirement reform – that dissolved by Decree the National Institute for Social Provision and Family Assignment Bureaus – introduced a combined regime with “share” (state-supported, *Régimen de Reparto*) and of “capitalization” (owned by private companies) provisions. This process was defined with the sanctioning of law N 24.241, that set into force the Joint Retirement and Pension System. Decree 2284/91, which was published in the official bulletin on October 31<sup>st</sup> 1991, arranged the transference to the national State of the total goods and resources that belonged to the beneficiaries of the retirement system and to the active workers.

Law N 24.241 stipulated the decrease of employers’ Social Security taxes and the transference to Private Retirement Plans (*AFJPs*) of the funds of those who choose to join the system, but also the funds of those who did not make any decision. This capitalization system is particularly insecure, allowing retirement funds to be invested in financial markets by private companies.

The reform had as immediate consequences the freezing retirement income and the impossibility of paying beneficiaries as established by law. Retired and pensiones adults that were receiving the system benefits were affected for the laws establishing their rights were not respected, while active workers were also affected since future benefits were restrained. The design of the new Social Security system displays a situation of violence due to the unequal treatment given to old, new and future beneficiaries.

<sup>105</sup> Consultora Equis, *Sin privilegios*, Buenos Aires, November 1999.

<sup>106</sup> Bertranou F., Grushka C., Rofman R., *Evolución reciente de la cobertura previsional en Argentina*, Separata del la VII Conferencia de Actuarios y Financistas a Nivel Internacional – Conferencia Interamericana de Seguridad Social, San José de Costa Rica, August 2002, p. 21.

The transference of funds that resulted from the privatization of the retirement system implied a decrease of around 2,000 million dollars a year for the national tax administration, which meant conditioning its accounts and leading to the need of deepening public indebtedness in order to substitute incomes<sup>107</sup>.

Gender aspects get a special relevance at the time of analyzing the sector without Social Security benefits because 7 out of 10 adults over 70 years of age are women. This can be understood due to the fact that they entered the labor market in worse conditions than men and because domestic service – almost completely performed by women – is highly elastic and almost does provide for Social Security<sup>108</sup>.

Family composition and Social Security coverage are two aspects to take into account when recognizing the situations of greater economic discrimination towards elder adults. It must be noted that almost 15% of the people over 70 years that lack of Social Security coverage live alone. Amongst them, 7 out of 10 are women. One third lives with a partner; 11% with sons of over 18 years; and over a third live in extended homes<sup>109</sup>.

In the same sense, almost two thirds of the ones over 70 years lacking coverage live in homes where nobody else enjoys that benefit; and 6 out of 10 people over 70 years live in homes where there are no employed persons receiving incomes. More than 8 out of 10 elder adults (over 70 years) without Social Security coverage that live in uni-personal homes or nuclear homes do not count with labor originated incomes. In the same situation we find 3 out of 10 of the ones that live in extended or *compuestos* homes. Over 18% of the elder adults without coverage live in indigent homes and over 50% live in poor homes<sup>110</sup>.

The relation between indigence, poverty and elderly adults with no Social Security coverage also displays a wide variation among provinces. In Misiones, Corrientes, Salta and La Rioja the proportion of elder adults without coverage that inhabit indigent homes is between 38% and 50%. In the same way, the incidence of poverty in these population surpasses 60%

<sup>107</sup> According to Vitelli, the State abandoned its "welfare" policies producing an important concentration of wealth. See: Vitelli G., *Informe Pericial, Tribunal Ético sobre la Deuda Externa*, 2002.

<sup>108</sup> Cieza et al., *op. cit.*

<sup>109</sup> Source: SIEMPRO, based on data provided by INDEC-EPH, October 2002.

<sup>110</sup> Cieza et al., *op. cit.*

in Neuquen, Santiago del Estero, Salta and Corrientes, 70% in Misiones and Jujuy, and is placed around 80% in San Juan and La Rioja<sup>111</sup>.

The economic crisis of the end of 2001 produced a notorious deterioration in elder adults' incomes. Monetary devaluation reduced the value their wages. In addition, the continuous fraudulent management of the elder adults' health care system (*PAMI*, including almost 4 million people has not yet been able to regularize its functioning with all the required health care services for this population<sup>112</sup>.

Different discrimination perceptions were gathered in interviews held in different provinces with organized groups of elder adults: *"elder adults are discriminated in their own institutions (Elder Bureau and PAMI, among others), treating them as beggars and not as subjects of rights"*<sup>113</sup>. *"Retired people not only receive reduced pensions but they also get them delayed. The Provincial Health Care System is terrible: there's bad administration and authoritarianism in the management"*.<sup>114</sup>

## Pensions and Social Programs

The data depicts a serious panorama of marginality and discrimination towards the elder adults that have Social Security coverage. More serious are, indeed, the situations of those who lack coverage at all; in particular, in the cases of former season workers, aboriginals, border migrants, etc.

Other coverage for people that are not included in the Social Security regime is provided to people over 70 years by the National Program of Non-Contributive Pensions, that works within the Secretariat for Social Development of the Ministry of Social Development. In order to benefit from this pension, people are required to have no other income nor relatives supporting them. Although these pensions have grown considerably during the last years (43%)<sup>115</sup>, we have received numerous denounces regarding the frequently "cliental" use of the benefit on behalf of officers and political leaders whilst this benefit does not cover for the whole of the necessities.

During the eighties, food programs as social policies were held; being

<sup>111</sup> Source: SIEMPRO, based on data provided by INDEC-EPH, October 2002.

<sup>112</sup> Zolotow D., "La situación de los ancianos en Argentina" in Red Latinoamericana de Gerontología, [www.gerontologia.org](http://www.gerontologia.org), 2002.

<sup>113</sup> Interviews in Mendoza, 2004.

<sup>114</sup> Interviews in Misiones, 2003.

<sup>115</sup> Bertranou F., Grushka C., Rofman R., *op. cit.*, p. 23.

the National Alimentary Plan (PAN) the first antecedent. Nevertheless, these programs did not include elder adults and their particular needs as direct beneficiaries. Only in the nineties they started to be included in the design of special programs<sup>116</sup>, which confirms the little visualization elder adults enjoy in public policies.

The Program for Elder Adults Social Support (ASOMA) saw light in 1993, being its basic service the provision of “food bags or boxes”, focused on the population living in scarcity. Also, support to canteens where elder people attend started to receive some attention. This program’s characteristic is given by its articulation with civil society intermediate institutions that work as links; in this case, Elder Adult Centers (2,634 institutions)<sup>117</sup>. However, the alimentary plans and special allowances of the Ministry of Social Development do not cover for the whole needs of the elder adults.

### **Institucionalization and Geriatrics**

From the societal point of view, the negative valorization of elder adults leads to affective exclusion within homes, considering them to be burdens. This situation turns out to be worse if added to the economic difficulties faced by many families, even when in some homes elder people pensions are an important percentage of the total family income.

In a growing number of cases, elderly people are excluded from their houses and “interned” in institutions. Their institutionalization, both private and public, presents a series of problems; among which, some can be considered under the scope of human rights violations. The health care quality varies sensitively depending on their cost and the professional responsibility of those in charge. The human rights violation lies in the lack of effective controls on the functioning of the geriatrics in the whole national territory, and is referred not only to infrastructure or personnel but also to the type of care provided and to the concepts that direct the work with elderly adults. Many of these institutions are addressed to “maintaining” the elderly person without affection, entertainment or learning activities: *“they are killed alive, (...) hence the elderly person is transformed into a social marginal similar to the street child”*<sup>118</sup>.

<sup>116</sup> Cieza et al., *op. cit.*

<sup>117</sup> *Idem.*

<sup>118</sup> Interviews in Córdoba, 2004.

Care for elder people is, in many of these institutions, in the hands of “managers” that promote the ingest of medicaments (mainly pain killers) in order to sedate them, instead of improving their condition in a more natural way with social activities, walks, excursions, entertainment, etc. As one of our technical interviewees stated, “*Elderly people are an important captive market of painkillers, just as any other business*”<sup>119</sup>.

## Education

There is no acknowledgment that elderly adults can still learn on behalf of the public policies and institutions that “take care” of them. There is no educative policy for them and it is neither stimulated on a private basis. There are almost no NGOs or institutions working with elderly people, except for those that are held in churches. Even when the Elder Adult Centres have proven to be important spaces for participation and recreation, they have little or insufficient official support.

Considering elderness as an “useless age” and leaving them aside, “the educative capacity of elder adults is not taken into account. The possibility of using elder adults to educate children or adolescents, except in isolated cases, is not even explored”<sup>120</sup>.

Some interesting experiences are clogged and not continued, instead of being copied and put in practice in other areas of the country due to the lack of understanding from public institutions. The experience of the *Narrator Grandparents* is a good example of this, since teachers trained elderly people in literary workshops and they later told stories at schools, with a good reception from the children, while they felt revitalized by the experience. “*I even forgot my pains*”, said one of the participants. Official support was nevertheless removed<sup>121</sup>.

## Age and aestetical paradigms

While the social and corporal aesthetic paradigm is youth, any corporal trace that evidences the passing of time is valued on a negative way. In our

<sup>119</sup> *Idem*.

<sup>120</sup> Interviews in Mendoza, 2004.

<sup>121</sup> Programme taking place within the Elderly Direction of the Province of Mendoza that was suspended in 2004. The Narrator Grandparents were invited to the International Oral Narrative Encounter that took place within the Annual Book Fair.

country, the market is especially efficient when using these stereotypes and promoting any type of aesthetic surgery or miraculous product in order to achieve “eternal youth”, without which people are condemned to be left aside. This type of discrimination is particularly strong in the realm of the TV industry<sup>122</sup>.

*Please refer to proposals N 17, 25, 96, 97, 98, 99, 100, 114, 115, 116, 117, 118, 119, 180, 186, 238 and 246.*

<sup>122</sup> See also the Transversal Axis *Racism* and the chapter on *Media*.



# ETHNIC-NATIONAL

The word "ethnic" has a complex origin. Although originated in the field of anthropology, it has been used along the last past 50 years in very diverse senses. In spite of the fact of being in many cases used as a less irritating notion than "race", it kept nevertheless the biologist and determinist profile the former enclosed. In other cases, the notion has been used as to unveil the complex cultural identity of those peoples that were prior to the shaping of modern States and whose unity did not imply neither linguistic nor territorial union. The cases of Gypsies or Jews are prototypical of this diversity in the European land.

This then, relates the notions of ethnic and nation, not because they are here considered a unit but on the contrary, due to the difficulties of accurately establishing the delimitation between one and the other in the context of the many groups of people that were and are part of the Argentinean identity.

Therefore the ethnic national group is here understood as the whole collectively of individuals with common traditions and/or language and/or religion and/or territorial origin and that understand themselves as part of that collectively; therefore the individuals "self ascription" becomes a central node to understanding belonging.

## **Brief history of the shaping of the identities**

The Argentinean identity structure was and still is characterized by a plurality of origins: The first Spanish conquerors (including Crypt Jews and Muslims who were escaping from the Spanish and Portuguese inquisition) and slaves brought from Africa, were added to the original inhabitants belonging to different indigenous communities – that were part of ample groups which limits did not meet those afterwards decided by the nation-States.

Immigration waves were afterwards to add people coming from diverse European states (Spanish, Italian, English, German, French, Welsh, Suisse, Polish, Russians, Ukrainians, among others), Jewish immigration from east Europe and Middle East as well as Arab population (Muslim, Jew and Christian) coming from Middle East and Africa, belonging to diverse groups of gypsies (from Spain first, from Hungary, Serb, Moldavia, Russia and Rumania), an important number of migrants from Armenia and a lasting one from Latin American countries (Bolivia, Peru, Paraguay, Chile and Uruguay mainly).

During the second half of the XX century people belonging to the Japanese collectivity arrived. Towards the end of the century people from China and Korea also arrived to Argentina. Therefore the spectrum of cultural diversity of Argentina included an important part of the ethnic and cultural groups of the planet.

This enriching diversity was not equally treated by the Argentine State. The State conformation departed from the denial of both the indigenous and the afroamerican inheritance and from a centralization of the identity based on Catholic Spanish roots. In any case, the most liberal sectors stated the need of opening the country to European immigration (particularly to the Anglo-Saxon one) as a mode of "nullifying" the indigenous, African and mixed inheritance of the Argentine Population.

In the beginning of the XX century, the Europe-centered and homogenizing perspective also aimed at denying the contributions of the diverse trends of migrations by means of the notion of "inassimilability" applied to Arabs, Jews, Gypsies and Armenians, among others. The "inassimilability" was understood as the impossibility of compatibility between the "Argentine identity" (conceived as European and Christian, basically Catholic) and these new much more plural identity models.

State intolerance nevertheless, found in this vast and rich mix race of civil society is its counter face. The indigenous and African marks of the identity tended to be invisibilized and to be denied, even by many of its descendants. Those mixed raced sectors that were located in urban contexts, often tried to hide their indigenous or African origins, not assuming their inheritance, language or customs and traditions. This can be understood as a self protection mechanism against discrimination. In other cases, generally in rural areas, this identity was kept in spite of the State offensive to deny and invisibilize it.

In opposition to this, the migratory contributions of the last two centuries were rescued by the popular imaginary by the incorporation of words, meals, traditions, sense of humor which were articulated in a complex and interesting identity model. A partial heterogeneity was opposed and achieved to the homogeneity aimed at by the State (through different governments), denying certain elements while critically rescuing others.

Civil society is currently reviewing its identity conformation. The indigenous origins begin to reappear in the social imaginary; fundamentally from the active militancy of the movement integrated by leaders of the different indigenous people. Something similar begins to happen with afrodescendants groups, even though their invisibility is still almost complete to the Argentinean common sense.

This report aims to reinforce this critical questioning of the "given" identity; to remove the imaginary models of a Euro-centered homogeneity and to cooperate in the reconstruction of a national identity model based on a critical and positive assumption of models of national identity. Based on this assumption of the wealth and variety of the origins of the Argentine national identity, and of its interesting mixing, almost unique in the world and that, from its heterogeneity, can contribute to the development of the humanity in the new millennium.

### **The organization of the chapter**

Given the impossibility to cover the complexity, richness and variety of the ethnic-national contributions to the Argentine identity, the work has been organized considering the priorities marked by the most difficult discriminatory processes undergone by groups along the Argentinean history up to the present.

This chapter begins with the analysis of the processes of negativization and discrimination of the aboriginal peoples. It continues with the ways of invisibilization and discrimination outlived by afrodescendants; it goes on to the analysis of Antisemitism, Arabphobia, Islamphobia, and Gypsyphobia. It finishes with the analysis of the discrimination directed against collectivizes of Latin American countries (basically, Bolivia, Chile, Paraguay and Peru) and against the collectivities of the Far East (Japanese, Chinese and Korean). The lack of reference to the rest of the groups that have conformed our identity is not due to a lack of importance of their role in the Argentine conformation – that was, in fact, very important in the case of the

Spaniards, Italians, Armenians, English, French, German, Welsh, Swiss, Polish, Russians, among others – but because the violence practices, discrimination, stigmatization or invisibilization of these groups, with the exception of minor episodes, didn't have a similar importance to those of the conducts analyzed in this chapter.

It is possible to clarify that the specific questions in relation to the religious development will be approached in the chapter on "Religion". The problems related to migratory policies will be considered in the chapter on "Migrants", whilst prioritizing in this chapter the basic characteristics of each identity group in Argentina, the main discriminatory processes undergone and their conception as a fundamental part of the conformation of the diverse and plural Argentinean identity will be addressed.

## ■ **Aboriginal People Discrimination and Negation Mechanisms**

### **Origin of the discrimination towards indigenous people**

The Argentinean republic was constituted as a nation-State on the basis of the denial of the American roots, the subjection of the original occupants of the land and the usurpation of their territory. This is a conflictive history and it is imperious for us to accept it so as to foresee a future without exclusions.

The aboriginal people were called "Indians" after the conquest, based on a historical-geographical mistake. Later they were called indigenous, aboriginal or "natural". In every case, under a sole denomination their immense cultural variety (sometimes completely different from one another) was homogenized. This was a first symbolical process of reduction of diverse cultural identities to a sole imposed identity: Indian as equivalent of barbarian or savage. During the national organization a classification of human groups from "uncivilized savages" – the Indian –, gaucho "barbaric but civilizable", to the "civilized citizens" (the immigrants that had European origins) took place.

Afterwards, and as a consequence of the separation of them from their lands and resources, the indigenous were compared to the notion of poor – Indian/poor – and all the characteristics that poverty was to hold: lazy,

delinquents, thieves, liars, without education etc, were also to be applied to them. The strength of this stigma is nowadays seen in the difficulty of thinking the particular identity of each indigenous group and their culture as separated from poverty.

Relationships with the indigenous people varied through different historical moments in our national territory. After the violent occupation of their land, the colonization of the northwest and the conflictive borders of the center of the country took place. In both cases, recognition of the inhabitants was documented in Pacts and Treaties. Finally, towards the second half of the XIX century, the State extended the national frontiers through military campaigns of annihilation and subjection of all the indigenous people both in the South of the country as well as the Chaco area.

During the XX century, the mechanisms of unequal assimilation were based fundamentally in the imposition of the European hegemonic culture through institutions (such as school and compulsory military enrollment) that aimed to assimilate and homogenize the people. Hence, those speaking their first language were punished at school and at the military enrollment. A distorted version of history was there taught, everything related to the original cultures was labeled as inferior or "savage". These policies were extremely efficient, and currently in regions such as Puna it is almost impossible to hear people talking in Quechua or Aymara while on the other side of the border, in Bolivia, all the communities still maintain their language.

Article 67 of the Constitution, present until the 1994 reform, clearly expressed the relationship between borders and conquest – spiritual and ideological – that reigned amongst the Constituents of 1853. Among the attributions of the National Congress there was a particular one stating "*to provide security to the borders; maintain a peaceful relationship with the Indians and promote their conversion to Catholicism*"<sup>123</sup>. This conception prevailed over a vision of the nation as mixed raced and diverse that several of the people struggling for our independence such as José de San Martín, Manuel Belgrano or Mariano Moreno, supported.

Argentina official historiography was efficient in sweeping away from school books any record of the violent conquest upon the original people, their struggle to defend their land and culture as they have also veiled the

<sup>123</sup> National Constitution 1853-1860, article 67, clause 15.

thought of many independentists on the subject. In this way an hegemony based on a partial and false vision of our nation was built: a white and European nation that intended to hide its initial genocide as well as the subjection towards original people not acknowledging each region and province history. Our country built on these historical facts, the basis for racial, political, social, economic, and cultural discrimination towards the indigenous people<sup>124</sup>.

Since 1940, the unequal economical development that Argentina underwent – based on urban industrialization and substitution of imported goods (concentrated in cities such as Buenos Aires, Rosario and Cordoba) combined with the extensive possession of land, in the pampas (Quecha word) as in the other provinces – derived in a strong internal migration. The major immigration wave was composed of mixed population and of members of aboriginal peoples from different provinces that were successively evacuated from the lands they occupied by local provincial powers.

The discriminatory stigma that was then built was “cabecita negra”, referring to the dark color of the hair and the face features of the inhabitants of the original people of our territory who started living in the shanty towns that surrounded the big cities. The current epithet towards them is “negro villero”. As a consequence many migrants hid and hide their indigenous identity avoiding the use of their first language so as to avoid being target of further discrimination in schools, hospitals and public and private institutions.

The search of reasons to justify the reduction of these peoples to slavery or different modes of tutoring started with the conquest and originated a debate between conquerors and colonizers regarding the “human” nature of the inhabitants of the American territory. This was crucial for justifying and organizing massive policies towards the inhabitant. Later, the building of the notion “race” was used to justify the situation of subjection and poverty that they were already living, hence explaining their inferiority on the base of supposedly scientific and positivist basis. This notion was internalized by several of these groups. We still find people belonging to these

<sup>124</sup> The concept of indigenous people has been maintained up to present and, as long as all international treaties (ILO Agreement N 169, UN and OAS declarations on the Rights of Indigenous People, etc.) recognize their rights making reference to this term, the concept has been transformed into a subject of rights.

groups (Toba, Pilagá o Wichí) that refer to themselves as belonging to a certain "race".

With the intention of not committing new generalizations, it is extremely important to point out that this process took place in each region of the country in a particular way.

In the case of Tierra del Fuego, a culture of over 3,000 years was exterminated in less than 70 years. Whereas in the Museum of the end of the world of Ushuaia photos of Selk'nam are exhibited, showing their tribal life, the pictures were taken by Father Martin Gussinde in the XX century ('20s and '30s). During the same period, landowners paid "Indian killers" for pairs of ears, and the Selk'nam woman breasts were even better paid. As an example, it is possible to point out that in this case, official history presents Julio Popper as the one introducing metal melting in this distant territory of the south without mentioning his participation in the slaughter of the Onas<sup>125</sup>.

In the same sense, the so-called "Conquest of the Desert" is an euphemism used in order to avoid mentioning that the Patagonia and the Pampas were inhabited by a large number of aboriginal peoples (Mapuche, Tehuelche and Rankulche, among others), and not an empty desert awaiting to be inhabited. The Pacts signed in the XIX century regarding the recognition of the lands of indigenous people were recognized by President Alvear in the '20 and afterwards violated, as land was usurped from them. At the moment, there are thousands Mapuche surviving at the periphery of cities like Carmen de Patagones, Viedma or Bahía Blanca whereas the ones called "fiscaleros" of Chubut and Rio Negro (almost all families and communities Mapuche) are still being evacuated from their land.

History books do not mention the military conquest of the area of Chaco (another Quechua word) at the end of the XIX century and drove the Toba, Mocoví, Pilagá and Wichi peoples to conditions of servitude in the sugar plantations. Children from these communities are generally taught in Spanish and learn that indigenous people do not exist, or that they used feathers and were savages and part of the past.

The Guaraníes of Salta and Jujuy listen from political leaders that

<sup>125</sup> Chapman A., *El fin del mundo: Los selk'nam de Tierra del Fuego*, Vázquez Manzini Editores, Buenos Aires, 1989.

Cacique Calilegua was also a legend while some of them are direct descendants of those who preferred to commit suicide rather than being reduced to the slavery. These are the same Guaraníes that are currently being moved away from their lands due to the advance of the agricultural frontier.

On the other hand, many Kolla, Omaguaca and Ocloya communities of the Puna and the Quebrada managed to stay in their territories because the hard weather conditions requires of a very special adaptation. They see today their territorial rights threatened by the construction and expansion of gas channels, highways and mining pits. In Argentina, except for some exceptions, there are still developmental modes that do not acknowledge the people, therefore they are not consulted about the environmental impact of works nor about the suitable controls to avoid depredation of the natural resources. Policies of this kind have direct impact on the indigenous people and their territories.

### **Indigenous census**

Ignorance on the magnitude, location and situation of the indigenous inhabitants (at a national and provincial levels) has historically reigned in Argentina. The 1965 intent to quantify the indigenous population by means of a census that only included the rural communities, was never completed and the data was never systematized. Law N 24.956 established in 1998 the incorporation of the issue of self identification and belonging to indigenous populations was added to the National Population and Housing Census of year 2000, made in 2001.

In this census 281,959 families recognized themselves as pertaining or descending from an indigenous groups, even though many indigenous leaders questioned this census stating that without a proper promotion on the subject many people were not going to publicly identify themselves because of shame or fear of discrimination<sup>126</sup>. At the present, a complementary survey is working successfully in obtaining full information on identity and social and economical conditions of the indigenous peoples.

<sup>126</sup> Interviews in Buenos Aires, 2003-2004.



## Indigenous laws

The National Institute of Indigenous Affairs (INAI) was created in 1985 by law N 23.302, aiming at the protection and support of aboriginal communities, whereas decree N 155 was sanctioned in 1989. In the course of numerous interviews, indigenous leaders pointed out that, since its creation the INAI has acted in the field of welfare and the issue of the recognition of rights. On the other hand, they explain, INAI does not work as an autonomous organism with indigenous participation. The design of policies addressed to the indigenous people and has always had a meager and insufficient budget for the existing necessities<sup>127</sup>.

In the same sense, several provinces have also promulgated directed laws to recognize indigenous rights<sup>128</sup>. Even so, according to information provided by the interviewed people, communities are still being evacuated from their ancestral lands and normative is not always respected. Lack of budget of provincial organism and the permanent political control on these organisms on behalf of local official political parties are a repeated complaint<sup>129</sup>.

In 1992, by means of law N 24.071, Argentina ratified Agreement N 107 of the International Labor Organization (ILO) of 1957. This instrument had a humanitarian and assistentialist conception that intended to integrate the indigenous people to the national collectivities. It recognized the situation of social and economical inequality of the indigenous populations that cuts them off from the benefits of the rights and the opportunities that other members of the population enjoy. Nevertheless, this Convention did not recognize the specific rights of the indigenous and only refers to "cooperation" on behalf of the indigenous communities in those policies that affected them. With regards possession and property of land it solely mentions that they were to be included in land policies common to the rest of the population.

The constitutional reform of 1994 recognized the ethnic and cultural

<sup>127</sup> As we have been informed, the Indigenous Coordination Counsel is in process of constitution, as established in law N 23.302.

<sup>128</sup> Among them, it might be noted law N 2.727 of the Province of Misiones, law N 7.121 of Salta, law N 426 of Formosa, law N 3.258 of Chaco, law N 2.287 of Río Negro, law N 11.078 of Santa Fé and law N 3.657 of Chubut.

<sup>129</sup> Interviews in Formosa and Salta, 2004.

preexistence of the indigenous people in Argentina and listed the rights thereby derived: the rights on the lands that were traditionally occupied and the giving of others apt and sufficient for human development, bilingual and intercultural education, and the right of participation in the management of their natural resources and in all issues that are of their competence<sup>130</sup>.

Although the Argentinean republic has ratified ILO Agreement N 169 on Indigenous Peoples and Tribes in Independent Countries – that was put in practice as from July 2001 – reinforcing the recognition of the rights and transcending the scope of Agreement N 107, internal norms are yet not compatible with the spirit of the agreement.

In effect, a great breach between enunciation and practical application, at national and provincial levels, maintain the situation of discrimination towards the indigenous people. Discrimination towards the indigenous people in our country is verified in two levels: discrimination in the access to services and benefits enjoyed by the rest of the population and the lack of fulfillment of the specific rights with constitutional status.

## **Civil and political discrimination**

### **• Juridical status and documentation**

According to the interviewed people, one of the mechanisms of discrimination exerted by the State, at a national and provincial level, is the denegation of registry of juridical status to some communities or the imposition of organizational forms (alien to their modes)<sup>131</sup>.

A serious problem faced by indigenous population regarding access to rights enjoyed by the rest of the Argentine population is the frequent lack of personal documentation. In the case of the children, because payment for registration could not be met by their parents. Also, an important number of undocumented adults exist, who do not have access to personal IDs. As well, in the cases in which documenting campaigns take place indigenous people do not concur because the channels of diffusion of the campaigns are not adapted to their cultural guidelines.

<sup>130</sup> Article 67 of the National Constitution (in force since 1853) was replaced by article 75, inc. 17.

<sup>131</sup> Interviews in Mendoza and Salta, 2004.

**• Access to justice**

The judicial field appears as a space in which frequent facts of discrimination of members of the indigenous communities appear, indicating an unequal access to justice. In many occasions, when the indigenous are victims of a crime, denounces are not received and hence the crime remains uninvestigated. On the other hand, in the cases where they are the accused ones, they generally lack legal counsel. In addition, the interviewed people express that police abuse is more violent when a poor person is involved and even more so when the target is an indigenous person.

Institutions such as the INADI or the National Human Rights Secretariat receive constant denounces of police abuses against indigenous people as well as on deficiencies in the application of justice. Access to justice is hindered not only due to the lack of professional support specialists on the constitutional rights of the indigenous the people but also due to the lack of interpreters who can aid people who do not speak Spanish properly. In this sense, the Civil Codes of procedures and the Criminal Codes, at provincial and national levels, require an adaptation so that an effective access to justice for the indigenous people can be fulfilled.

**• Social and political participation**

The State is obliged to give to the indigenous peoples participation in the management of their natural resources, and in those subjects that are incumbent to them, but this has not always been applied. The aboriginal people have not been consulted when their land has been franchised to lumber, oil and mining companies. This situation maintains serious conflicts in the past and at the present time.

Several denunciations of coercion were done in the sphere of political participation regarding some communities who state that their votes are maintained as captive. These coercions include the promise of delivery of goods, cutting off social welfare plans, armed threats, and compulsive transport with subtraction of identity cards<sup>132</sup>.

<sup>132</sup> Interviews in Chaco, Formosa, Misiones and Salta, 2003-2004.

## Socio-economic discrimination

### • Ethnic and cultural pre-existence

Argentina does not manage to assume in practice the coexistence of peoples with other identities and cultures: Argentina still sees itself as a mono-cultural nation and does not acknowledge its multiculturalism and its plurality of languages, hence devaluting the culture of the indigenous people. The manifestations of their spirituality are still being considered as superstitions, their medical practices as witchery or illegal exercise of medicine, whereas the diverse cosmo visions of the different peoples remain unknown.

The interviewed members of the indigenous communities stated that they usually do not rely on the intention of authorities (being provincial or municipal) to promote and to spread their cultures, nor to facilitate communication amongst them<sup>133</sup>. They also disbelieve in the intention of the State on supporting the recovery of their language and aiding them with the making of a dictionary.

In addition, the interviewed indigenous groups expressed that their religious practices are usually discriminated, labeled as sects, superstitions or witchery, to the time which they undergo pressure from different churches to impose its subject beliefs to them or are subjected to paternalist practices on behalf of some religious groups<sup>134</sup>.

During the last years, the indigenous people have initiated a process of recovery of their ethnic identity and fundamental values. Some of them are communitarian possession of the land, solidarity, respect of the elderly, direct democracy in the election of their authorities, respect to the Cosmovisions that recover the relationship between human beings as part of the nature, among others. In some cases the indigenous religiosity is pronounced as syncretism (incorporating their own elements to Christianity<sup>135</sup>).

### • Indigenous lands

The despoliation of territories belonging to people is still taking place. Even when in the war against Mapuches many of their lands were recog-

<sup>133</sup> Interviews in Buenos Aires, Neuquén and Salta, 2003-2004.

<sup>134</sup> Interviews in Formosa, Mendoza and Salta, 2004.

<sup>135</sup> Interview with members of the huarpe community, Mendoza, 2004. This process is also verified for other indigenous peoples. Please refer to "Religion and indigenous spirituality" in the *Religion* chapter.

nized as so by the National Army and the State has also done so by treaties and pacts during the XIX century<sup>136</sup>. During the lapse in which Marcelo T. de Alvear was President, several territories were recognized as legally belonging to the indigenous communities. At the time of conformation of the provincial directions of land colonization, these documents were not known. As a consequence, deeds of lands occupied by indigenous people were provided to foreign settlers. This actions provoked the systematic evacuation of the indigenous people from their land, leading them to suffer discrimination and negation.

The absence of a coherent policy regarding land, both in provincial and national normative, leads indigenous people to be known as “fiscaleros”, as precarious fiscal land occupants, in spite of the constitutional mandate stating they are the legitimate owners of the land and are to be urgently registered under nominal titles.

Titles without any juridical guarantee of definitive property on the land, or imperfect titles that can eventually expire, have sometimes been provided to the communities.

Another way to evacuate the indigenous communities from their lands has been to leave them without fundamental resources for their development. As some of the interviewees pointed out, “*about 60 years ago we had to leave the land because they were leaving us without water, cutting it or deviating it*” and also, “*we had then to work on other peoples lands*”<sup>137</sup>.

In some provinces the directions of lands or of colonization granted titles on lands occupied for years by indigenous communities. Those “*supposed owners – in the papers – never show up nor labor it and only use the guarantee to get bank credits, or as assets to prevent auctions*”<sup>138</sup>.

Even when the claim of the indigenous people on determined territories is recognized by law, the State powers usually set limits on the effective right or situations of speculation with the land before possible expropriations occur<sup>139</sup>. Nobody questions that individuals owning thousands of hectares,

<sup>136</sup> Carrasco M. and Briones C., “*Pacta Sunt Servanda*” in *Documentos IWGLA*, N° 29, Copenhague, abril 2000.

<sup>137</sup> Interviews in Mendoza, 2004.

<sup>138</sup> *Idem*.

<sup>139</sup> An example is the one of the Province of Mendoza with law N° 6.920 (unanimously approved in 2001) recognizing Huarpes as pre-existing people. The Provincial State Prosecutor appealed stating that it is unconstitutional because it would grant too many

where land is recognized as belonging to indigenous communities, “*what do they want such a big extension of land for?*” is a habitual question<sup>140</sup>.

At the present time, the National Congress is debating a law destined to declare national emergency in relation to indigenous communitarian land, with the objective of bringing evacuations to an end regardless of the nature of the possession or state of the trials. This law will be an act of justice when the situation of all the communities of all the provinces is regularized.

### • Biodiversity

In 1994, law N 24.375 ratified the Agreement on Biological Diversity in Argentina. Article 8 (j) of this agreement establishes that “*in concordance to the national law [of the State parties of the Covenant] respect, preserve and maintain the knowledge, innovation and practices of the indigenous communities and those who hold traditional living styles pertinent to the preservation and sustainable use of biological diversity and will promote its widest application with the approval and participation of those holding those knowledges, innovations and practices to be shared on equitable way*”. Nevertheless, innumerable examples showing that this article is not being fulfilled in Argentina have been registered.

Some zones inhabited by indigenous communities, where biological diversity was protected by law, are not affected and are being auctioned to individuals by provincial governments and/or franchised to companies so that they operate on their biodiversity<sup>141</sup>. In the same sense, there is no policy in Argentina protecting the traditional herbalist’s knowledge, avoiding their patenting by transnational drug companies.

### • Health

Although we do not know of any existence of a rigorous study on the conditions of health of the indigenous peoples, some facts demonstrate that in the zones inhabited by indigenous peoples there are higher levels of chil-

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lands to aboriginal people. At the same time, the alledged owners show up, wiring the lands and demanding large sums as compensations. Also, huarpes are offered with additional titles that do not recognize them as pre-existent people.

<sup>140</sup> Interviews in Mendoza and Tierra del Fuego, 2004.

<sup>141</sup> Interviews in Chaco, Formosa, Misiones and Salta, 2003-2004.

dren malnutrition, infantile mortality and maternal mortality than the provincial levels<sup>142</sup>.

We have received several complaints stating that the community sanitary agents are imposed on them due to political conveniences and that the right of the communities to choose the people they consider as more committed to their community is not respected. The traditional knowledge of some indigenous healers remains non respected or devaluated and stigmatized.

### • Education

Education presents two facets in which discrimination towards the indigenous children and young people can be verified: the possibility of egalitarian access to the education and the respect of the culture through the bilingual intercultural education. Illiteracy is greater in the indigenous zones than in the average of the population of the respective province<sup>143</sup>.

Bilingual intercultural education implies that the children can study initially in their maternal language, soon to incorporate Spanish, and then all the indigenous and non-indigenous children can share the values and knowledge of their different cultures. It also implies the incorporation of methods and systems of education of the indigenous peoples.

Prior to the constitutional reform of 1994, the Federal Law of Education (1993 law N 24.195) already established in its article 5 (q) *“the right of the native communities to preserve their cultural guidelines and to the learning and education in their language, as part of the educational process”*.

Diverse experiences of bilingual intercultural education, some of them in public institutions, others by initiative of the communities or private groups exist in the country. Nevertheless, we are very far from having a coherent and exhaustive policy on the subject, which could guarantee a quality of education for all the indigenous children and adolescents. Many of the experiences are product of the good will of some educational and communities rather than of the national and/or provincial policies of State.

One of the greatest deficits in the bilingual intercultural education is that the bilingual intercultural teachers act as “bilingual aids” in the class-

<sup>142</sup> Interviews in Formosa and Misiones, 2003-2004. Data from Ramón Lista Department (Province of Formosa) agree with these findings.

<sup>143</sup> Interviews in Misiones and Salta, 2003-2004.

room and not as educational agents<sup>144</sup>. People we have interviewed show that in many cases the indigenous aids are used as janitors and not for educational assistance. We have also received complaints regarding the assignment of teachers. In some provinces, they are based on political favors and not on their teaching skills<sup>145</sup>. In any case the teachers statute priorities those who certify as belonging to the place. Because teachers at schools of depopulated areas have better salaries, many apply for jobs although they are not bilingual.

Many indigenous children and young people fail at school, not only due to the lack of bilingual teachers but also because the teachers are not able to work in intercultural contexts and they cannot generate linkage mechanisms between children or young people at school, thus not allowing them to face racism and discrimination among students<sup>146</sup>.

Within the framework of the National Ministry of Education, the National Program of Bilingual Intercultural Education is being developed, oriented to solve some of the problems mentioned above. In order to be applied in all the provinces, local adhesion is required. Therefore it depends on the prevailing political wills.

In several provinces the indigenous people are trying to recover their language through different educational experiences. In some cases they receive certain support – not always sufficient – from provincial governments. Whereas in other cases it entirely depends on the community effort<sup>147</sup>.

In some interviews held in the provinces, the indigenous groups referred to the existence of discrimination exerted by university academic sectors, that deny the existence of some indigenous peoples (such as the Huarpe, Pehuenche and Mapuche of the province of Mendoza), based on

<sup>144</sup> For example, in the case of the Special Teachers of Aboriginal Modality (MEMAS – *Maestros Especiales de Modalidad Aborigen*) in Formosa and the Aboriginal Teaching Assistants (ADA- *Ayudantes Docentes Aborígenes*) in Chaco.

<sup>145</sup> Interviews in Chaco, Formosa and Salta, 2003-2004.

<sup>146</sup> Interviews with teachers in Tierra del Fuego and Salta, 2004.

<sup>147</sup> Experiences in La Pampa, Mendoza and Neuquén. Huarpe people are trying to recover their languages: even though there are not longer speakers, there exists a dictionary registering both languages (*milcayac* in Mendoza and *allentiac* in San Juan) that is serving this people to recover the memory of the languages. Interviews in Mendoza and Neuquén, 2003-2004.



linguistic considerations and due to the fact that there's no people speaking these languages<sup>148</sup>.

### • Indigenous women

Indigenous women are object of discrimination for being women, indigenous and poor. They undergo discrimination and violence within and outside their homes: *"the indigenous woman is mistreated in every sense"*<sup>149</sup>.

According to many interviewed indigenous women, within the health system they are usually blamed for malnutrition or illness of their children: *"the sanitary rooms of the communities, if existing, are empty"*<sup>150</sup>. In many cases, they do not know about the existence of programs on reproductive health and cases of 12 years old pregnant children – unaware of their state – have been registered. Explanations are carried out in Spanish and in the absence of translators, even though most of the women – Wichí, Chorote or Tapiete – do not speak Spanish. When a woman is going to give birth and the baby comes fast or the doctors and nurses do not arrive to take care of them, they are shouted at: *"Ay these Matacos!* [term considered as pejorative by Wichis] *why didn't you wait for me to arrive"*. In some cases, the interviewed people declare that health professionals do not even make the arrangements for health check-ups<sup>151</sup>.

The indigenous women show the highest levels of illiteracy. Some communities do not send girls to school but there are no special incentives nor programs so that the indigenous women become qualified and educated.

The interviewed indigenous women complain that they cannot participate in decision making processes in the communities and indigenous organizations. This situation changes according to each town<sup>152</sup>.

The concept of violence perceived by indigenous women is expressed in the following way: violence of hunger (*"the greatest violence is not being able to feed the children when they cry out of hunger"*); violence at hospitals (*"we are marginalized, they exclude us, do not provide us with drugs, scream*

<sup>148</sup> Interviews in Mendoza, 2004.

<sup>149</sup> Interviews in Salta, 2004, in coincidence with the conclusions of the III Indigenous Women Meeting, held at Tartagal (Salta, November 2003).

<sup>150</sup> *Idem*.

<sup>151</sup> *Idem*.

<sup>152</sup> *Idem*. It is indicated that Guaraní women usually hold much more protagonism within their communities than Wichí or Chorote women.

at us, they scold us most of all at the moment of birth or when the children fall ill, they do not give us schedules or we must wait for hours to receive medical attention"); violence at work ("humiliation exerted by bosses, insufficient wages"); violence unfolded by government ("indifference, discrimination, lack of work, land is removed from us"); police violence ("they do not register our denounces, police hit us"); physical violence ("mistreatment, hitting, sexual abuse, humiliation and verbal violence")<sup>153</sup>.

The women we have interviewed express, in the face of the discrimination they suffer in family life, social life and institutional life they express, that "we feel sad, inferior to the rest, forgotten, used by politicians, impotent and furious"<sup>154</sup>.

Argentina needs to assume its history – conflictive and painful as it may be – and in this way recover its Indo-Afro-American roots that together with the European, Arab and other migration are part of our multicultural history. The aboriginal peoples that were erased from our history have to be recovered in their full dimension for a history written in our country, recognizing the daily practice and presence and their current rights.

*Please refer to proposals N 13, 14, 15, 16, 17, 44, 50, 51, 68, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 137, 140, 159, 167, 168, 169, 170, 171, 172, 173, 183, 188, 205, 215, 223, 224, 233, 234 and 238.*

## ■ Afrodescendants Discrimination and invisibilization mechanisms

Although some investigations in diverse American countries understand – on the base of the finding of pre-Columbian figures of well defined black people – the arrival of Africans to the continent before the arrival of the Spaniards, the constitution of the Black Argentinean Community took place in three well defined historical moments.

The first moment begins in XVI century, and is consolidated in XVII and XVIII centuries, with the arrival of African slaves destined to serve as manual labor for European colonizers in America. The African people were

<sup>153</sup> *Idem.*

<sup>154</sup> *Idem.*

skilled in agriculture, mining and metal crafts, therefore ideal to enrich the Spanish and Portuguese crowns. Another advantage was their immunity to new diseases transmitted by colonizers and to tropical diseases.

The enslaved people brought to these lands were based in the Caribbean and Central America (originating mainly from Cabo Verde, Northern and Southern Guinea), in Brazil (Nigeria and Togo) and in Chile, Peru, Uruguay and Argentina (Angola and Congo), concentrating in the regions where sugar cane and cotton were cultivated.

If it is considered that 12.000.000 African people arrived alive to these lands – and it has been estimated that for each one of them, several perished in the trip due to starvation, diverse diarrhea, dehydration, suicides, punishments or executions –. In this way then it is possible to grasp an idea of the magnitude of the tragedy brought about onto the African continent during European economic expansion.

Buenos Aires and Montevideo became the most important ports of the South Atlantic for this slave traffic, although the crown authorized the seat for slavery dealing in Colonia de Sacramento. It soon continued to the rest of South America: by sea through the ports of Valparaiso and Rio de Janeiro or, by land at the different Argentine provinces reaching Alto Peru.

In Argentina hundreds of thousand of men and enslaved women were used by the Creole oligarchy for rural, domestic and artisan work. Records show their importance in the Argentine society of the time: in the census of 1778, 54% of the population in Tucumán are registered as black, in Santiago del Estero, 42%; in Catamarca, 52%; in Salta, 46%; in Cordoba, 44%; Buenos Aires, 30%; Santa Fe, 27%; Mendoza, 24%; La Rioja, 20%; San Juan, 16%; Jujuy, 13%; and San Luis, 9%<sup>155</sup>.

One of the most habitual forms of resistance occurred through the cultural and social organization: the denominated “Nations” were societies that put together the enslaved people of the same geographic and linguistic origin around African ceremonial celebrations. Each “Nation” elected a king with a year long mandate and the most numerous in Buenos Aires were the one of Congo and Angola, although there were many other less numerous ones (Benguela, Cabinda, Lubolo, Loango, Mozambique, Masinga, Seda, Quipara, Anzá, Camunda, Canguelá, Mujumbí and Lumbí). The

<sup>155</sup> Andrews R., *Los afroargentinos en Buenos Aires*, Ediciones De La Flor, Buenos Aires, 1990.

day of black king Balthasar was celebrated on January 6<sup>th</sup>, and with the aim of buying freedom for the members of the societies, collections took place. Less numerous groups that practiced Islam also existed (Hausa, Yoruba, Mine Naó and Mandinga) and many were controlled by the authorities due to their militancy fame and because they had led rebellions throughout the whole continent.

The religious brotherhoods – that begin to be developed in XVII century under severe control by the Catholic Church – served, nevertheless, to organize the afrodescendants. Although the adhesion to these brotherhoods was obligatory for the enslaved people and had as objective the veneration and care of virgins and saints, it became another way by which the African adopted external aspects of the Western culture with different aims and giving them their own meaning. These groups conserved the oral tradition and all of them had a “room of animas” destined to guarding their dead beloved ones.

One of the strategies used by the enslaved people to surpass their condition was to enter the army under the promise of freedom that was to be provided to them after five years of service. As well, during the independence wars, the “law of rescue” forced the proprietors to yield two of each five slaves for the service of the arms. They were a substantive part of the Creole armies: in the “Regiment of Granaderos a Caballo” formed by Gral. San Martín in 1812 and, specially, in the “Army of the North”, made up of 1,200 men, 800 liberated blacks “rescued” by the State. In every case, they occupied the positions of greater risk in the battles, carried out the most disagreeable tasks and were also the most numerous to die in battle<sup>156</sup>.

The slave system established racist and stigmatizing matrices that still subsist under different forms. After the freedom of the enslaved people and the Declaration of Independence, the black population continued integrating the most underprivileged layers of the society. The marriages to natives and Creoles of the subordinated classes mainly formed mixed families related to rural work.

<sup>156</sup> Emilio Corbiere, director of the magazine of the Library of the National Congress, states: *“Those negroes that nurtured with their blood and sacrifice the liberating armies, and San Martín should recognize the value of those troops as well as the racist atmosphere of that epoch because he did not achieve to reunite ‘mulates’ and ‘whites’. The slave negroes died ‘separately’ in the Independence fights, that is to say, in rigorous ‘apartheid’”*. *Revista Bibliopress*, octubre-diciembre 2001.

There is data indicating that during Rosas governments (1829-32 and 1835-52) a peak of black population in the province of Buenos Aires took place and their popularity can be exemplified in the popularity *candombes* had at that time. After the fall of Rosas, the black were object of persecution and mockery by the *Unitarians*: there are numerous Buenos Aires' stories tending to ridicule African traditions<sup>157</sup>.

At that time the texts begin to speak about the "disappearance of the black population". The sustained decrease of the African population can be registered in the XIX century (towards the end of that century massive European immigration drastically put down in relative terms the rate of black and indigenous population in all the country). Whilst a social operation of invisibilization was taking place that was strengthened by the generation of the '80 to "whiten" the Argentinean society. This coincide with article 25 of the national constitution that fosters European immigration.

Following that tendency, in official documents, previous characterization of the people as "Blacks", "Pardos" "Morenos" and "Colored" started to be reduced to "Trigueños", an old expression that can be applied to diverse ethnic groups and that cooperates in the invisibilization of the black. If persecution and mockery that were still being practiced upon them can be understood as self identity denegation and territorial dispersion that operated in important number of "Black Creoles" although many afro descendant communities maintained cultural and social resistance based mainly on mutual assistance societies.

The second historical moment begins at the end of the XIX century and reaches half the XX century. It corresponds with immigration from Cabo Verde Islands, that arrived in search of better living conditions than the ones the Portuguese colonial administration had set in their country. Before World War I, bilateral agreements were settled so as to bring sailors from these islands to work in the new Argentine fluvial fleets and merchant marine.

The third moment started around 1990. A combination of economic causes and fears of political persecution stimulated it. Migrants from Senegal, Nigeria, Mali, Sierra Leona, Liberia, Ghana and Congo arrived. Then, in addition, other afrodescendants from Latin American countries

<sup>157</sup> Martín A., "Blanquear Buenos Aires" in *Relaciones*, Montevideo, 1996.

such as: Peru, Brazil, Cuba, Colombia, Dominican Republic, Ecuador and Honduras<sup>158</sup>.

At the present time, the descendants of the first "Creole" black group or Afro-Argentineans are spread along all the national territory. They live with the general population and in small black communities in the provinces on Buenos Aires, Santa Fe, Tucumán, Salta, Corrientes, Entre Ríos, Santiago del Estero, Catamarca and Córdoba. Most of the people from Cabo Verde are in harbor areas and coast zones, in the province of Buenos Aires or in cities of the Coast and maintain the traditions of their communities of origin.

The most recent migrations settled down mainly in the city of Buenos Aires: men work in the field of construction or crafts and women in the domestic service. The members of these groups state that they have problems to obtain the required documentation for labor contracts. Also, denunciations exist regarding young black women from Central America and the Caribbean area that have been brought under the promise of work possibilities and, on arrival, their passports were retained, and have been forced to exert prostitution<sup>159</sup>.

In the last decades, afrodescendants communities have regrouped around several organizations that struggle to revert the historical invisibilization of which they have been object. As example of this negation it is an illustrating example to remember that at Ezeiza Airport a black Argentine woman's passport was retained for investigation of authenticity under the statement that said that "*in Argentina there are no black people*"<sup>160</sup>.

The Argentine-Latin American Committee against *Apartheid* in South Africa was created, and in October 2000 the Coordination Board of Afro-Argentinean Institutions was established in order to support the Durban Conference and to articulate with aboriginals, migrants and refugees and others harmed by discrimination, racism and other connected forms of intolerance. These groups aspire to obtain the total recognition of their

<sup>158</sup> The historical resume is based on a report presented by Prof. Miriam V. Gómez Lima (Sociedad de Socorros Mutuos – "Unión Caboverdeana") at the Seminar "Apartheid, diez años después", organized by INADI and the Sudafrican Embassy in Argentina in October 2004.

<sup>159</sup> Interviews in Buenos Aires, 2004.

<sup>160</sup> This public incident involved Mrs. María Lamadrid, President of the Organization "Africa Vive". Interviews in Buenos Aires, 2004.

communities by the State and the Argentine society as a whole, and to be part of the nation in equal conditions with other social and ethnic-national groups, thereby recovering the historically denied visibilization.

It is for that reason that the present organizations of afrodescendants are collaborating with the INDEC in the implementation of a survey to give account of the Argentine population related to the African ancestry. The zones that are being studied belong to the provinces of Buenos Aires and Santa Fe. Estimations of population by foreign institutions have been carried out: the Gaviria Foundation and the University of Oxford estimates the existence of a 6% of afro descendent population in Argentina (near two million people).

The representatives of afrodescendants groups consider that the situation of marginality inherited from colonial days remain: as during the XIX century, their occupations are still as subordinates and they habitually live in precarious houses. In addition to this, many mothers are Female Home chiefs and the schooling level remains low.

They also denounce discriminatory treatment in the labor environment (harassment, ridicules, humiliating paternalism, etc.) and police persecution<sup>161</sup>. The most usual forms of discrimination occur in:

- Educational Establishments. It has been indicated that the educational establishments usually transmit society's existing discrimination and that the curricula only refers to the black presence in relation to colonial times and related to slavery.
- Mass media. In most of the cases a "exotización" of the blackness or the frequent treatment as "sexual objects" is displayed always uncontextualized, as if they did not belong to the Argentine society.
- Hospitals. Discriminatory treatment in the hospitals is indicated: "*we are left for the last when waiting for medical attention*". In addition, they assure that there are certain diseases that would be common in the black community (hypertension, diabetes, falciforme anemia, respiratory difficulties and allergies) that are not prevented nor adequately taken care of.

*Please refer to proposals N 17, 26, 84, 125, 137, 159, 171, 183, 184, 188, 205 and 223.*

<sup>161</sup> Interviews in Buenos Aires, 2004.

## ■ Antisemitism Argentinean singularities

### The early Jewish presence in Argentina

There are numerous speculations on the origin and history of the Jewish collectivity in Latin America: from the discovery of Hebraic's characters in the indigenous writing in century II B.C. or the philological work of comparison of the Hebraic and Quechua roots, to the diverse analyses on the composition crypto-Jews of some Spanish or Portuguese families that arrived to Rio de la Plata<sup>162</sup>.

Nevertheless, it is worth to start the analysis at the moment when Judaism became more visible, with the appearance of the first Jewish organizations of the country. Previous to this – during the period 1810 to 1853 –, the freedom of cults was not a definitive policy of the region for the suppression of the “Court of the Santo Officio” in 1813 did not automatically imply the possibility of exerting other creeds. It just allowed the new government of the Rio de la Plata to bring Inquisition to an end.

In spite of the imposition of religious freedom in the Constitutional Convention of 1853 (which spoke of strong resistance), still in 1857 the President of the Supreme Court of Justice, Francisco de las Carreras, considered freedom of beliefs “exclusively refered to Christians and not a sect that still awaits for the arrival of the Messiah”<sup>163</sup>.

On November 11<sup>th</sup>, 1860 the first Jewish marriage in Buenos Aires was celebrated. Difficulties in legalization occurred and was only approved on appeal before the Supreme Court.

<sup>162</sup> Regarding the speculations on the hebraic origin of american indogenous groups and regarding the phylogological work between Spanish and Quechua, please refer, among others, to: Schvartzman P., *Judíos en América*, Instituto Amigos del Libro Argentino, Buenos Aires, 1963; Bargman D., *Indios y judíos en el imaginario americano* en *Raíces*, Nº 2, Buenos Aires, 1991; and Quiroga A., “Huellas judías en la civilización quichua” en *Judaica*, Buenos Aires, 1939. Regarding the analysis of the cripto-Jewish presence, please refer to the works of Boleslao Lewin (specially, *La colectividad judía en la Argentina*, Alzamor Editores, Buenos Aires, 1974) and Alberto Liamgot (*Criptojudíos en Hispanoamérica*, Congreso Judío Latinoamericano, Buenos Aires, 1991). An intereseting resume on both topics can be found in Feierstein R., *Historia de los judíos argentinos*, Planeta, Buenos Aires, 1993.

<sup>163</sup> Quoted by Feierstein R., *op. cit.*, p. 50.



In 1862 the first Jewish institution of Buenos Aires (the Israelite Congregation of Buenos Aires), and six years later adopted the name of Israelite Congregation of the Argentine Republic (CIRA). Between the appearance of this first organization and the end of the XIX century, a phenomenon of strong Jewish migration to the country occurred, within the framework of the migratory processes of the moment. Simultaneously, a consolidation of this presence through the sprouting of diverse community institutions (social, of health, religious, sport, litical, among others), the creation of a cemetery, the recognition of its first rabbi (Henry Joseph, in 1882) by the Argentine State and the interaction of the traditions, customs and languages of the Jewish collectivity in the construction of the Argentinean identity.

Simultaneously, during the XX century the Jewish and Jew Argentinean presence unfolded with particular force in the scientific and artistic field, constituting itself not only in one of the greater Jewish collectivities of the planet but, fundamentally, in one of the Jewish collectivities with greater intellectual and artistic production. Newspapers, publishers, theaters, sport institutions, political movements, throughout laid out the Jewish presence in Argentina during the XX century. At the moment, many of the Jewish institutions are nucleated in the DAIA (Delegation of Argentine Israelite Associations), as well as the funeral functions of social action, education and services are carried out by AMIA (Association Israelite Mutual Argentina).

### **About Antisemitism in Argentina**

Resistance to the Jewish presence in Argentina after the massive arrival of Jewish immigration to the country (at the end of the XIX century and beginnings the XX century), tended to be anchored in some layers of society, generally representative of the aristocratic groups or members of the Argentine dominant sectors. Numerous anti-Jew manifestations can be noted in the literary and theoretical production of the period, which appeared (beyond repeated phenomena of precise aggression in the Jewish colonies or diverse political manifestations) in the celebrations of the Centenary of the Country (in 1910) and, with greater virulence, in the "Semana Trágica" of January 1919. The para-police violence of this episode had all the characteristics of a real *pogrom*<sup>164</sup>, with attacks to businesses, houses and associations of the

<sup>164</sup> Pogrom is a term emerging in Russian zarism, accounting for aggresions (more or less

Jewish people throughout the country, as well as persecution and aggressions in the streets of the Jewish districts of Buenos Aires. These facts strongly marked the Jewish presence in the country that, in many cases, had arrived hoping to escape from European experiences of persecution.

From that moment, antisemitism settles in with strength in certain institutions, specially within Justice and Security Forces. It is difficult to track Jewish presence in Argentine politics. For instance in Chancellery and Justice system prior to the return to democracy of 1983. Simultaneously, its social force tends to decrease with sporadic but persistent reappearances that are anyway less and less representative.

Nevertheless, antisemitism was used *as arma de choque* both in the nationalist coup d'état of 1943 as in the political conflicts of the sixties, by diverse nationalistic and xenophobic groups, with aggressions in the streets, damage to Jewish institutions as well as in cases of kidnapping and tattoo of swastikas to Graciela Sirota, in 1962. Although it did not constitute an institutional policy, it was often used as a mobilizing element, particularly on the part of the nationalistic right, although there exist some cases also led by part of the liberal right. The actions unfolded by para-police officers of the Triple A during the first half of the Seventies were also characterized by a persistent anti-semitic tendency.

The military dictatorship of 1976-1983 institutionalized this shaped antisemitism. The rates of detained-disappeared Jews surpass ten times their presence in the population. Although in this over-representation the commitment of many members of the Jewish collectivity with counter-regimental policies can have played an important role in their high insertion in urban and university sectors, this is not enough to explain such a level. Diverse studies consider possible that the Jewish belonging has also played a role in the selection of the victims or, as they indicate some testimonies of survivors, in the possibilities of liberation. On the other hand, and this is still much more clear and documented, numerous testimonies of the victims of State terrorism indicate the "special treatment" which the Jewish prisoners during their permanence at the clandestine centers of detention of the last military Dictatorship were put under<sup>165</sup>.

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organized, generally para-Statal) that aimed at vehiculizing popular anger of any origin by means of assassinations, burnings and damaging Jewish persons and institutions, usually grouped in certain neighbourhoods or towns.

<sup>165</sup> Braylan M., Feierstein D., Galante M., Jmelnezky A., "Informe sobre la situación de los

## The present situation

Although a statistical measurement on the Jewish presence in Argentina does not exist, researchers and demographers estimate that it would be slightly inferior to the 200,000 members, having registered a peak of 300,000 members at the beginning of the decade of 1960. The community has an important institutional network, that includes a school network of integral education.

With the democratic return a diminution of fierceness and characteristics of State antisemitism could be observed. Some relevant facts, in this direction, are the sanctioning of the 1998 Anti-discriminatory law (N 23.592), the creation of the National Institute against the Discrimination, the Xenophobia and Racism (INADI) in 1995 or the sanctioning of the laws that authorize public and private employees to respect their denominational holidays at the moment, valid for Jews and Muslims (law N 24.571 for Jewish holidays and law N 24.757 for Muslim holidays). There is also an increase of Jewish presence in ranks of State management that can be noted. Nevertheless, these advances are dimmed by present impunity and the lack of investigation result of the anti-semitic attacks of 1992 (against the Embassy of Israel) and in 1994 (against the building of the AMIA-DAIA, seat of the organized Jewish community in our country).

On the other hand, some other anti-semitic actions, at institutional level and civil society level can be underlined. The most serious one constitutes the sentence of Room I of the National Criminal Chamber that annulled the sentence to prison of a group of skinheads who had struck a young person believing him to be Jewish. This sentence is particularly serious because it states that the invocations of nazism, anti-semitic insults or supportive chants referring to Hitler do not constitute discriminatory actions but a "military shout" of a gang, and is therefore comparable to any other<sup>166</sup>.

Another element that must be highlighted is the repeated profanation of Jewish cemeteries, in particular the impunity of their authors, who are

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detenidos-desaparecidos judíos durante el genocidio perpetrado en Argentina" en *Revista Indice*, N° 20, Centro de Estudios Sociales – DAIA, Buenos Aires, 2000, p. 297.

<sup>166</sup> The National Criminal Chamber (Sala I), in its decision of February 17, 1999, annulled the sentence of the Criminal Oral Tribune N° 3 regarding "Paszkowski, Andrés Pablo y otros s/ infracción ley N° 23.592 – Causa N° 214/97". Please refer to the *Justice Administration and Legislation* chapter.

never discovered and/or arrested. Repeated denunciations have also been received during our interviews on the lack of fulfillment of the law on religious holidays in diverse provinces or certain companies, as well as the persistence of anti-semitic conducts on behalf different areas of the judicial power or of some members of security forces.

In this sense, one of the most notorious cases has been both episodes related to former Chief of the Army, Gral. Ricardo Brinzoni, for he had hired as a civil employee a lawyer belonging to one of the very small Argentine Nazi groupings. A year later, the same Chief was protagonist of discriminatory expression against journalist Héctor Timerman, inviting him to read the one of the most anti-semitic paragraphs taken from "Merchant of Venice". The gravity of these facts is also rooted in the fact that at its moment Brinzoni was one of the maximum authorities of the Argentine Army.

Another case of media repercussion was the labor discrimination and expression of antisemitism unfolded by a member of the legislature of the City of Buenos Aires, fact that also remains unpunished until the moment, in spite of the intervention of the INADI.

This dual face defines the current situation of the Jewish collectivity in the country. On the one hand, the diffusion of antisemitism in the civil society less and less representative and is encapsulated in small social zones. On the other, the gravity of the actions and their consequences (attacks, profanations), their institutional character and, which is more serious, the impunity of their authors, turns antisemitism a subject that must be reflected upon as well as an institutional preoccupation.

In our opinion, suitable legislation to face antisemitism exists. What it is still lacking is the clear political will to exile these practices by punishing the authors. Since its degree of diffusion is not very broad but, nevertheless, anchored in sectors with important material and symbolic power, to revert impunity is one of the few possibilities the State counts on to tend towards its definitive eradication.

*Please refer to proposals N 26, 84, 125, 137, 159, 171, 188, 205 and 223.*

## ■ Arabphobia and Islamphobia\* Denied discrimination and banalized exclusion

Antisemitism in general and Arab and Islamphobia in particular are phenomena previous to the arrival of the migratory waves to Argentina from the Middle East and northern Africa since the end of the XIX century.

Therefore, to attempt (within a diagnostical approach) a summary description on the flow of people for almost two centuries, would lead not only to little rigorous comprehension – given the space of the present work – but also to a problematic relationship of determination between people, speeches and discriminatory behaviors towards them<sup>167</sup>. Furthermore we would be in the face of the aggravating situation of confirming the illusion that refers to them as a sole group of people (which is one of the stereotypes on which discriminatory speeches and behaviors are founded). This type of reductive representation obliges those individuals to group on a created identity that is little (or non) related to those original identities in the seek of acquiring civil existence and public visibility that would otherwise be denied to them.

Phobias related to islamic and arabic presence in Argentina refer more to existing prejudices constructed in Spain and Portugal during the Middle Ages and the Golden Spanish Century. The European experience has been re-created in our country<sup>168</sup> rather than reactions to presence of the community<sup>169</sup>.

It therefore, seems more pertinent to the aims of the present report to point out those singularities (of the matrix of thought) structured towards the end of the XIX century. A matrix that is congruent to the foundational notions of the culture of State and the pattern of the “own” and “alien”

\* **The author of this part of the chapter is Arq. Hamurabi Noufourri.**

<sup>167</sup> For information regarding this process, please refer to Noufourri H., Haddad H. and others, *Sirios, libaneses y argentinos. Fragmentos para una historia de la Diversidad Cultural argentina*, Ed. Cálamo d/s, Buenos Aires, 2004.

<sup>168</sup> Noufourri H., Feierstein D. y otros, *Tinieblas del Crisol de Razas: Ensayos sobre las representaciones simbólicas y espaciales de la noción del otro en la Argentina*, Ed. Cálamo d/s, Buenos Aires, 1999.

<sup>169</sup> There are judicial sentences based on injure and calumnes during XIX century (after the 1853 Constitution) on the basis of publicly stating that a person held “more or convert” descendant.

promoted by it. Its prejudices and stereotypes are still practiced (referred to what is named as “Arab”, “Islamic” or “Muslim”, etc., within the scope of contents and materials of the official educative system, media speech and cultivated social imaginary).

The first peculiarity to underline is the monolithic configuration (and the homogenous substance) of the transmitted image regarding a series of groups of people whose multiplicity is reduced to Islam and to the Hollywood made genotype of the nomad from the Arabic Peninsula<sup>170</sup>, as an aesthetic anti type of the masculine as incarnated as “the bad guy” or the antihero.

The second singularity derives from self-representation<sup>171</sup> built on a naturalized hiding of the own past that – in such a way – is demonized hence installing the perception of the phobic process (and the discriminatory processes that make them possible) as a new phenomenon in the Hispanic American universe. Contrary to what is supposed regarding anti-semitism and Islam and Arabphobia in particular are not new at all. Those phenomena join the conformation of the Spanish identity – of an eurocentric root – as they became founding elements, as a model of reference for the establishment of the treatment given to the American “others” (Indigenous or Afro-Americans) during colonial times as in the era of the independent republics by means of a positivist metamorphosis<sup>172</sup>.

As a negative reference pole, whose “disappearance” is considered as a necessary requirement to the existence of the “Spanish” that was the to be known in America, its perception was to be installed in the American scope, as the radical and definitive otherness or automatic transference. A pole made as a tradition of negative representation as an aversion towards the Arab-Semite and the Islamic of (whose diverse racist speeches and practices can be verified throughout the Hispanic American and Argentinean history as an anti type and a biological confessional nature threat of the “Moor race” until the Sarmiento’s lay reformulation as a model of “barbarism”. Through the Argentinean lay positivist tradition one of the territorial projects of massive expulsion<sup>173</sup> of one of the human collective of our

<sup>170</sup> Olive skin type, wide eyes and large noses.

<sup>171</sup> Images that the group witholds. Please refer to Noufour H., *Del Islam y los árabes: acerca de la percepción argentina de lo propio y lo ajeno*, Ed. Cálamo, Buenos Aires, 2001.

<sup>172</sup> The ongoing State “feast” of October 12 can be taken as example of. This date is referred to as “race day”.

<sup>173</sup> Noufour H., Feierstein D. y otros, *op. cit.*, pp. 153-156.

history to afterwards end up forging through education a “void” in the local collective memory that produces surprise, strangeness or incredulous implausible (before the detection of any feature or Arabic person and or Islamic the cultural linguistic spatial social etc) of the proper. (*Haven't they already 'integrated' themselves (meaning, disappeared)?*).

Therefore the greatest problem regarding the existent discriminatory behavior -deriving from that cultural matrix- towards Arabic people cultural identity, Muslim confession or with Middle East ascendancy is based on a mechanism that withholds their perception as an autochthonous process based on an ignorance on their roles as a negative reference nodes to the definition of an “us” a of Latin America in general (and in Argentina in particular), rather than on the speech of the popular linking those identities they belong to, to the scope of “high” cultural register of those that understand themselves as so.

The secrecy or unfamiliarity of this historical tradition - verifiable more in the making of the Hispanic rather than on the Latin American one - is supported in the well known media mechanism that exotizes or makes the Arab or Islam phobia seem foreign, for they are veiled by the principle of novelty that gives excessive space to (or only mentions) the Arab or Islamic element in relation to the international conflict alien to local reality. It is nevertheless noticeable that this was not to have lasting permanence in the public imaginary if the latter was not previously counting on a conflictive image of the invasion of the “western” space on behalf of the “afro Arab sands” (*Sahara* from de Arab: desert) transmitted since childhood and adolescence by the educational system. This speech portraits the Islam Arabic (omitting the Arab Jews and the Arab Christians) as an intrusion in “the history” of a almost belic fact that fortunately was an accident that ended in the “history of the human kind” where normality was recovered in 1495 thanks to the “fall of Granada” understood as the “Arab or Moor occupation of Spain” and hence taught as the corollary of the conquest hence denominated “Reconquest”.

These conditions of visibility allow the transposition of the victim from its local root<sup>174</sup> as it is understood as originated on intrinsic characteristics of “the way of being” and the social practices (alien to society in which they appear), the cause of their problems is located in international conflicts

<sup>174</sup> Feierstein D., *Seis Estudios sobre Genocidio*, Eudeba, Buenos Aires, 2001.

while in-depth, suspicions of a conflictive rooted on a backwardness con-substantial to their identity is understood as non-compatible to developmental and more democratic systems, as it is seen as (an element from middle ages) survive. Therefore its manifestation on the local scope (when understood as the "importation of any problem") is thought as a transference onto the present of a "conflict belonging to a far and alien past" to our countries' neutrality regarding a history that took place during middle ages allows so. Certainly the "importing" is done through the terms and categories that the speech pronounced to refer to the subject (terms and categories) are holding the same internal logic inherent to the formulation of the Hispanic American and Argentinean racist tradition (that results pronounced and re-stimulated as a confirmation of the certainties it already had) regarding those identities.

When these discriminatory practices are unfolded on people with Arab identity and/or Muslim confession due to their relationship to "external conflicts" their appearance is naturally associated to the public manifestations of those signs of identity. Hence, conclusions are done suggesting that the suffering is being caused by a problem that comes from the outside (which is not Argentina and is hence not suffered by Argentineans). Finally, the perception is that (in a never explicit way) that who is perceived as so or decides to assume (to any extent) the features of that identity is proportionately responsible of what is being suffered as he/she is importing a problem alien to the Argentinean identity for he has "not fully integrated" for insisting in being what Argentineanism is not, an assimilationist speech in which the term "Argentinidad" means uniform and unilateral of the original cultural features and that is founded on an identity of incompatibility (that can be in this elements be traced).

This has caused the continuous forging of the descendants that are simply named as "Arabs" and never as Argentineans or Arab-Americans or as Arab descendants) following a hierarchical logic that measures the autochthonous and the own by means of counting numbers of native generations (for which no number seems correct this is not even a millennium of Iberia life or 150 years of Argentinean nativity seems enough as to erode their image of foreigners).

The assignment of "americanicity" or "argentinicity" (depending on the scope) is co-natural to the identities of the aboriginal or Afro people while being opposite for Jewish or Muslim identities (and/or Islamic ones) as



these last belong to the – non less mythological – Semite biological trunk, this is to a wholly and solely autochthonous of Middle East and hence “out of place in America”.

This situation, which seems harmless to those within the Argentinean parameters of speech (this is, as directly proportional to the “alien” status of Semitism or Arabism) that mechanically derives in discriminatory practices in the face of a minor conflict or discussion which can go from symbolic violence of the assignment of “ethnic partiality” within the analysis or descriptions to harassment due to the people’s “looks”, name or religious confessions associated to a danger that has derived on a collective suspiciousness as it as been registered along the last ten years in the criminal justice<sup>175</sup>. This can be noted in security forces that follow entire families, the prohibition of arrival in airports due to having a determined name or an Arabic outfit, etc., as it was pointed out in a general claim amongst Arab descendants or belonging to Islamic confession<sup>176</sup> – that is nowadays equivalent, due to diverse causes as it occurred along XIX and XX centuries in Argentina – for they have been treated as “*de jure*” but not “*de facto*” citizens.

*Please refer to proposals N 17, 26, 84, 125, 137, 159, 171, 188, 205 and 223.*

## ■ Gypsy communities and Rom people\* Discrimination and harassment

Alike the Jewish and Muslim, discrimination and harassment has been outlived by the first Gypsy communities that arrived to America coming from Spain and Portugal, as much through deportations as, fundamentally, fleeing from the policies from inquisitorial harassment and persecution.

The first groups, therefore, were constituted by the Portuguese *Kalons*

<sup>175</sup> Please refer to the report and recommendations of the American Bar Association in <http://www.abanews.org/kencomm/rep121b.pdf>.

<sup>176</sup> Please refer to INADI’s report to the Office of the United Nations High Commissioner for Human Rights on the increase of these practices after September 11, 2001.

\* **We thank Jorge Bernal and Jorge Nedich for their collaboration in this part of the chapter.**

and the Spanish *Kalé*, to which other contingents were then added since the conquest until the XIX century.

From the end of XIX century and beginning of XX century, other Gypsy groups arrived to the Republic from different European countries. Among those groups it is possible to find the *Kalderash* (from Russia, Sweden, France, Serbia and Moldavia), the *Machwaya* (from Serbia), the *Lovaria* (of Hungary, Germany, Russia), the *Rom Xoraxané* (mainly of Serbia), the *Ludar* and/or *Rudar* (of Rumania and Serbia), the *Sinti*, and once again, but now voluntarily, the Spanish and Portuguese *Kalé*. Finally, in the last twenty years other Rumanian, Serbian and Bulgarian gypsy groups have arrived.

It is important to highlight that, after diverse interviews with the Argentine gypsy community, we have decided the denomination of "gypsies" to refer to the set of these peoples. This is because not all of them assume a Rom origin and, therefore, the term "gypsy" gives account of a set of groups, including the Rom groups.

### **Characteristics of the main groups**

Gypsy communities coming from Spain (or *Spanish Kalé*) can be subdivided into two groups: the first names itself as *Argentine Kalé*, due to its early arrival to the country, whereas the second group (the *Spanish Kalé*) arrived from Spain in the decade of 1970.

The *Kalderash* groups also arrived at different moments and from diverse places. The *Kalderash* Greek and Serbian arrived between 1880 and 1890. They were nomadic and they were used to selling horses and tools for agricultural work and worked as boilermakers (workers of copper). In the XX century they began to move towards the great cities and discovered new opportunities with the selling of automobiles (which is their current main economic activity). The Romany language is kept within this group in spite of the introduction of some words in Spanish.

The arrival of the *Kalderash* from Moldavia and Russia occurred later, between 1900 and 1920. Following the *Kalderash* tradition, their income is also due to the selling of cars, the independent work on metals and other businesses.

The groups *Ludar* and/or *Rudar* began to immigrate at the end of the XIX century from Rumania and Serbia. Certain cultural aspects, such as the Romany allegiance and the type of clothes of the women, are similar to

the Kalderash. But their greater difference with the Kalderash is the language: they speak Rumanian instead of Romanish.

During the last five or six years an important Gypsy, migration from Rumania took place. These groups arrived due to discriminatory processes and the poverty they undergo in their countries of origin. Their difficulties in Argentina are worse, since the economic and social situation is added to the common discriminatory processes gypsy communities undergo.

Towards the end of 1980, the gypsy communities in Argentina had their first attempt of creating a formal organization, given the resistance that have these groups to the bureaucratization of their practices. In year 2000 the Cultural Identity Romani Association, that reunites some of these groups as well as some other organizations (which allowed them to participate in the Conference of Durban) was created.

In spite of not appearing in school texts or official pamphlets as one of the groups that constituted the Argentine identity, the gypsy community has between 70,000 and 300,000 members in Argentina.

### **Main discriminatory processes towards the Gypsy community in the country**

The Gypsy collectivities emphasized during the interviews the educative field as fundamental regarding discrimination. Authorities and teachers speak of their prejudices, slightly or openly, especially when the gypsy identity is visible (for example, through the use of clothes by women). This has pushed many to replace it, so as to hide their origins. In other cases, it produces school dropouts, when generating a contradiction between the preservation of the identity and the continuity of education at schools. The presence of the Gypsy community in the country is absolutely absent of the school books, with which it tends to make them look as foreign or exotic regarding the rest.

On the other hand, they also indicate difficulties regarding health care, particularly discrimination undergone in hospitals and centers of health on behalf of the hospitals personnel. In some cases, the ties generated by a State order that forces "territorial anchorage" has also to be added. In some Gypsy groups, this lack of anchorage adds greater difficulties to health care and education.

It is fundamental to face a policy addressed to their inclusion and support at school development and health policies, and also through interpreters (for those children who speak Romanish or Rumanian, in schools

with strong Gypsy population; and at the hospitals or centers of health near regions with an important number of gypsy population). Activities of training of the educational personnel and authorities, in order to know the peculiarities the Gypsy identity and to dismantle many present prejudices would also be convenient.

These prejudices often appear in mass media, where they are spread as part of a common sense. Although this happens at mass media and press – as much in “notes of color” like in the “police” section – one of the most serious facts indicated by the collectively was the emission (with high levels of rating) of the soap opera “Gypsy”, in which the members of the collectivity as related to crime and to violence, aggressive and organized in clans with criminal characteristics. This collective allocation of negative attributes (applied not only to a member but practically to all the protagonists of the series) tends to install as true, fictions, belonging to a set of imaginary prejudices and that end up reinforcing and aggravating the existing discriminatory practices.

The interviewed members of the Gypsy collectively show deep concern regarding the State performance<sup>177</sup>. The testimony of the interviewed people show that measures in relation to the diffusion were not taken nor activities of promotion or education about the gypsy presence in the country. Indeed when the denunciation on the matter was done it resulted misestimated by the INADI, under the explanation that was based on the fictional nature of the TV show.

In case of having developed the facts this way, this situation had to be reviewed and reverted, since it would constitute a way of State legitimating the negativization of one of the identitarian groups that, on the other hand, undergoes with greater strength the discriminatory processes in our country.

The anti-discriminatory training – in particular of the State civil employees and still of those who carry out duties in the organisms of fight against the discrimination – appears as high-priorital to the aims of starting to disarticulate the matrices of construction of prejudices and discrimination on behalf of State institutions and society in general.

*Please refer to proposals N 17, 26, 84, 125, 137, 159, 171, 188, 205, 223 and 238.*

<sup>177</sup> Interviews in Buenos Aires and Neuquén, 2003-2004.

## ■ Latin American collectivities<sup>178</sup>

### Discrimination and stigmatization

Argentina received a slow but stable flow of immigrants from Latin American countries starting in the middle of the XIX century. The participation of these groups in the demographic structure of the country was veiled by the impact that European immigration had in the composition of the population, especially when migratory currents arrived at the country (1870 to 1910, as well as after World War II).

Nevertheless, the Latin American migration began to be visible towards 1950 as a result of the effects of the country industrialization and the process of substitution of imports. The new facts generated an important demand of manual labor and resulted in important internal migrations from the agricultural zones towards the urban centers. The internal migrations, leaving depopulated regional economies, favored at first the circulation of seasonal migrants from bordering countries<sup>179</sup>.

Since the '70, the bordering migration concentrated in the metropolitan areas and had a significant increase: according to data of INDEC of 1991, more than 50% of the migrants from bordering countries resided in Capital Federal and in the Conurbano Bonaerense. Women represented 52% of the total<sup>180</sup>. If in the past the provinces were the main destiny of the migrations from neighboring countries. From 1960 onwards, Latin American immigrants started to go to the "metropolis": Buenos Aires, Cordoba, Rosario. The proportion of bordering migrants that go to the area of Buenos Aires

<sup>178</sup> For this analysis we have consulted: Argerich A., *¿Inocentes o culpables?*, Hispamérica, Buenos Aires, 1985; Lattes A. y Oteiza E., *La dinámica migratoria en América Latina*, CEAL, Buenos Aires, 1984; Maguid A., "Migrantes limítrofes en Argentina: su inserción e impacto en el mercado de trabajo" en *Revista Estudios del Trabajo*, N° 10, ASET, 1995; Mármora L., "Migraciones, prejuicio y antiprejuicio" en *Revista de Ciencias Sociales*, Centro de Estudios Sociales de la Delegación de Asociaciones Israelitas Argentinas, Buenos Aires, 2000; Santillo M., *Las organizaciones de inmigrantes y sus redes en Argentina*, Simposio sobre Migración Internacional de las Américas – San José de Costa Rica, mimeo, septiembre 2000; Torrado S. (comp.), *Política y población en Argentina. Claves para el debate*, Ed. De La Flor, Buenos Aires, 1991.

<sup>179</sup> Paccera M.I., "Nosotros y los otros" en *Encrucijadas*, N° 7, año I, mayo 2001 (pp. 46-57). Also, Correa V., "Migraciones: una mirada diferente" en *La integración de los migrantes: un desafío de nuestros tiempos*, CAREF, Buenos Aires, 2003 (pp. 44-57).

<sup>180</sup> INDEC, *La población no nativa en Argentina, 1869-1991*, Buenos Aires, 1996.

increases from 25% to 47% between 1960 and 1991 and these movements take place in parallel to the flows of internal migration<sup>181</sup>.

At present, the population coming from bordering countries reaches 60% of the foreign population, while another 8% arrive specially from the rest of Latin America – from Peru, a phenomenon that was accentuated during the course of the Nineties. According to official numbers, 88,260 Peruvians live in the country, although the general consul of Peru in the Argentina states that the Peruvians in the country are around 140,000, 90,000 of which reside in Buenos Aires, La Plata (that is conformed also by a significant number of students migration), Cordoba and Mendoza<sup>182</sup>.

The most numerous collectivity is the Paraguayan, with about 325,000 members that reside mainly in the Conurbano Bonaerense and Capital Federal. But these numbers rise if those, who are legally Argentine and belong to second or the third generation are counted<sup>183</sup>.

According to INDEC, Bolivians and Chileans follow in number, with 200,000 people each one<sup>184</sup>. The Bolivian community distributes itself throughout Buenos Aires, Chubut, Jujuy, Mendoza, Salta, Santa Fe and Tucumán. On the other hand, the Chilean community is mainly in Buenos Aires, Bariloche, Comodoro Rivadavia, Cordoba, Mendoza, Neuquén, Rio Negro, Santa Cruz and Tierra del Fuego. The Brazilian community is conformed by 34,000 people, seated mainly in Misiones. The Uruguayan community – of around 120,000 people – is based mainly in Buenos Aires, Corrientes and Santa Fe<sup>185</sup>.

According to the data of the 1980 and 1990 censuses, a million inhabitants born in other Latin American countries inhabit Argentina. Neverthe-

<sup>181</sup> Maguid A., "El chivo expiatorio" en *Encrucijadas*, N° 7, año I, mayo 2001, p. 63.

<sup>182</sup> Source: INDEC, 2001. See also José Luis Torres Seguin testimony quoted by Rocha L., "La Argentina, primera en el número de inmigrantes" in *La Nación*, september 27 2004.

<sup>183</sup> Alberto Loyarte, referent of that community in Argentina, states that "Paraguayans live spreaded along the country, and it is estimated that in Buenos Aires and suburbs they rise up to 600,000". Quoted by Rocha L., *op. cit.*

<sup>184</sup> Interview with Mario Santillo of the Center of Latinamerican Migration Studies (CEMLA). Quoted by Rocha L., *op. cit.* Also, Oteiza E., Aruj R., "Inmigración real, inmigración imaginaria y discriminación en Argentina" en Oteiza E., Novick S., Aruj R., *Inmigración y Discriminación. Políticas y discursos*, Trama Editorial – Prometeo Libros, Buenos Aires, 2000, p. 39.

<sup>185</sup> Source: INDEC, 2001. Also Oteiza E., Aruj R., *op. cit.*, pp.13-48.

less, the lack of registries of entrance of the immigrants from neighboring countries by land, allows us to think that the number is still greater.

In our country, the official speech on Latin American immigrants from bordering countries – Bolivia, Brazil, Chile, Paraguay, Uruguay –, and Peru – and good part of the daily practices depict clear xenophobic characteristics. Denominations like “bolitas”, “brasucas”, “chilotes”, “paraguas”, “perucas” and “yoruguas” exemplify some of the multiple forms of discrimination with which the Argentineans name Latin American migrants<sup>186</sup>.

Latin American migrants and their families usually undergo abuses by security forces – *“they are arbitrarily stopped by the police contravention figure of marauding solely because they have indigenous aspect, (...) due to their ‘looks’”*<sup>187</sup> – and on the part of its employers: the over exploitation and the illegal work in all the provinces, in particular the seasonal type, is a practice of many decades that has been worsened under the compass of the economic crisis, *“Paraguayan or Brazilian of Guaraní origin, to a large extent work informally and for low wages”*<sup>188</sup>. They also point out numerous problems of discrimination with respect to access to the services of public of health, education and housing<sup>189</sup>. As well as they are usually imputed with the responsibility in the increase of the delinquency and the insecurity<sup>190</sup>.

The disappearance of the European overseas migratory waves in last the four decades and, at the same time, the increase of the flows of immigrants from Latin American countries, made even more evident many of the negative aspects of an image of the “European like” identity, anchored in certain notions of “ethnic”, cultural and social superiority that certain sectors of the Argentine population had internalized as theirs.

Numerous forms of discriminatory violence – in the migratory legislation, policies, press, school, health institutions – are exerted at the present towards the Latin American communities that live in our country. *“This migrant is victim of a contradictory situation. On the one hand, he constitutes a labor sector easily submissive to over exploitation, which contributes to the loss of wages and, by the other, is victim of social segregation, marginality,*

<sup>186</sup> Interviews in Córdoba, La Plata, Mendoza, Neuquén, Salta and Tierra del Fuego, 2003-2004.

<sup>187</sup> Interviews in Córdoba, Salta and Tierra del Fuego, 2004.

<sup>188</sup> Interviews in Misiones, 2003.

<sup>189</sup> Interviews in Córdoba, La Plata, Mendoza, Neuquén, Salta and Tierra del Fuego, 2003-2004.

<sup>190</sup> Please refer to the *Media* chapter.

*xenophobia and all type of abuses on behalf of the State. That type of immigration carries with its own faults as well as with the others, or invented, to disguise social deficiencies oh which they are not responsible*<sup>191</sup>.

Please refer to proposals N 17, 26, 84, 125, 137, 159, 168, 171, 183, 184, 188, 205, 223 and 238.

## ■ Asian collectivities Discrimination and stigmatization

Taking into account the data from the last national census, it can be stated that the set of the collectivities of Asian origin counts in Argentina with near 20,000 members. Nevertheless, most of the estimations speak of greater numbers<sup>192</sup>.

We can correctly refer to Korean immigration to Argentina since 1965. Although the numbers vary – the return to Korea was in '90 – there are currently 30,000 people of Korean origin in our country. Half of this population arrived between years 1984 and 1989, settling in the City of Buenos Aires (there is an important “Korean District” in Bajo Flores) and in the Conurbano Bonaerense. The first migratory waves came from the great cities of Korea but this last flow, on the contrary, comes exclusively from Seoul: middle class sectors, with university levels, availability of a minimum capital of investment<sup>193</sup>. A type of immigration that tends to move with the complete family group.

At present, an unofficially estimate states that between 40,000 and 60,000 Chinese immigrants live in Argentina<sup>194</sup>. The most important migra-

<sup>191</sup> Oteiza E., Aruj R., *op. cit.*, p. 32.

<sup>192</sup> Please refer to: Mera C., *La colectividad coreana en Argentina: reconfiguración identitaria, negociación y conflicto*, Instituto de Investigaciones Gino Germani – Facultad de Ciencias Sociales (UBA), mimeo, s/f; Bielogorski M., *La presencia coreana en Argentina: la construcción simbólica de una experiencia migratoria*, Facultad de Filosofía y Letras (UBA), mimeo, 2003; Curtis C. y Santillán L., *Peruanos y coreanos: construcción de subjetividades migratorias desde la prensa* en [www.naya.org.ar/articulos/identi16htm](http://www.naya.org.ar/articulos/identi16htm).

<sup>193</sup> A bilateral treaty signed by Argentina and South Korea in 1985 encourages a conditioned migration, granting residence to professionals, technicians and migrants holding personal capital (around US\$ 30,000).

<sup>194</sup> Palomar J., “De la muralla al Obelisco”, *La Nación*, 5 de diciembre de 2004.



tory movement of this community takes place in '90: the majority come from the Republic of China in Taiwan or from the People's Republic of China. 60% of the immigrants are of Taiwanese origin, whereas 40% come from continental China and Hong Kong. In Capital Federal they are concentrated in the "Chinese District", located between the Arribeños, Mendoza, Juramento, Montañeses, next to the railway station of Belgrano C. The Chinese Association, the Buddhist temple, the Eastern protestant churches and businesses for the collectivity are located there.

The Japanese collectivity is conformed by around 30,000 people<sup>195</sup>. The first migrations date from year 1900 and they settled in the Province of Buenos Aires. In years 1950 and '60 an important flow of Japanese immigration due to the postwar period took place. At the moment, 70% of Argentine Japanese immigration are original of the island of Okinawa. Most of the population is in the Capital Federal and the Conurbano Bonaerense. Also Japanese and descendants from Japanese people are to be found in La Plata, Mar del Plata, Rosario, Cordoba, Mendoza, Misiones and in smaller proportion in other provinces.

In relation to the Korean and Chinese communities the cultural difference is visualized by the Argentineans as a deviation from the norm regarding: sociability guidelines, uses of the space, nourishing habits, etc. and constitutes a hyper exotización strategy that allows the changeability of the denominations – "Korean" can be replaced by "Chinese" – or the recurrence to the generic term: "Eastern".

Distrust and negative social speech regarding Koreans and Chinese people has – since the arrival of the Korean immigrants in 1984 and the Chinese immigrants in the '90 – been more profound since their visibility has turned greater. In Argentineans' speech, the negativization of Korean and Chinese people appear incarnated in the difference, indeed defining a *prototype*: "they are isolated"; "they do without the Argentinean"; "they do not incorporate the guidelines of the Argentine society"; "they are economically successful by eluding labor costs"; "its economic ascent is fast, visible, but illegal"; "their only objective is to make money and to reach a high social status"; "they are extremely competitive"; "they are invading and exploiting". The Japanese community, on the contrary, is a migration that is

<sup>195</sup> For further information, please refer to [www.nikkeinet.org](http://www.nikkeinet.org)

object of less negative prejudices, although stereotypes are also constructed that make the profound knowledge of this community and its cultural contributions more difficult.

*Please refer to proposals N 17, 26, 84, 125, 137, 159, 171, 183, 184, 188, 205 and 223.*

# GENDER

## Definition and International Conventions

Gender based discrimination refers to the one practiced following the socio-historic symbolic construction that assigns certain roles and socio-cultural attributes to persons based on biological sex. It turns sexual difference into social inequality, establishing a hierarchy in which the masculine is valued as superior to the feminine. This implies that men and women do not occupy the same place, neither are they equally valued nor they have the same opportunities or receive an equal treatment in our society; leaving women in a situation of subordination<sup>196</sup>.

From the human rights' perspective, as established in the Convention on the Elimination of All Forms of Discrimination against Women, "*the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field*" (art. 1°).

<sup>196</sup> The following materials were consulted for this analysis: Bonder G., *El sexismo en la práctica escolar: evaluación de una experiencia de cambio de actitudes*, Centro de Estudios de la Mujer, Buenos Aires, 1990; Mitchell J., *Woman's State*, Penguin, New York, 1971; Morgade G., *El determinismo de género en el trabajo docente de la escuela primaria*, Cuaderno del Instituto de Ciencias de la Educación (UBA), Buenos Aires, 1991; Rosaldo M. Z., "Mujer, cultura y sociedad: una visión teórica" en Harris O. y Young K. (comp.), *Antropología y Feminismo*, Anagrama, Barcelona, 1979; Rubin G., "El tráfico de mujeres: notas sobre la economía política del sexo" en *Nueva Antropología*, Vol. VIII, N° 30, México, 1986; Wainerman C. y Raijman R., "La división sexual del trabajo en los textos de la escuela primaria argentina: un caso de inmutabilidad secular" en *Reseña de Actividades CENEP*, Buenos Aires, 1985/1986.

Our country ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1985, and included it with constitutional status in the 1994 constitutional reform (Article 75, Clause 22). The 1994 Inter-American Convention on the Prevention, punishment and Eradication of Violence against Women – Belem do Pará Convention – was also ratified. The National Women Council was created on the basis of these engagements, assumed by the State regarding the promotion of positive action measures for the achievement of equality in the treatment and opportunities between men and women<sup>197</sup>. In addition, several regulations were issued whereas others were revised. Women, nevertheless, do not enjoy full equality and are discriminated in different spheres of social, political, economic and cultural life.

## **Labor**

Strong discrimination against women is verified in the labor field, not only considering the salary gap but also in the type of jobs and in job ranks reached by men and women. Although a massive incorporation of women into the labour market took place in recent years – many women hence becoming the sole economic support of their homes –, women’s employment is characterized by its instability, informality, under-occupation (shorter working day) and lack of social benefits.

In May 2003, only 45% of the women between 15 and 65 years old were occupied whilst 65% of the men had access to a remunerated employment, including the benefitters of the welfare plan for unemployed family heads called “Plan Jefes y Jefas de Hogar Desocupados”<sup>198</sup>. Women show higher under-occupation levels; that is to say that they work a shorter than the habitual working day. While for the total population time-based under-employment is of 19.3%, it reaches 24.7% amongst women (more than 2 out of every 10 women are under-occupied)<sup>199</sup>. Women precarious labour is based on the high concentration of occupied women in activity realms with little or no protection levels such as, domestic service, rural work, urban informal sector.

<sup>197</sup> Women Subsecretariat was created in 1987 and transformed in 1992 into the National Council of Women by Decree 1426/92.

<sup>198</sup> Source: Dirección General de Empleo, Ministerio de Trabajo, Empleo y Seguridad Social. Data corresponding year 2002 (INDEC - EPH).

<sup>199</sup> *Idem*.

At the same time, women are concentrated in “typically feminine” working branches, which are poorly remunerated and that appear as extensions of the domestic role of “caregivers”: domestic service, teaching, social and health services, other personal services and clothing industry. In these branches, women represent more than 50% of the total number of employees.

Regarding salary discrimination – this is, the difference in salaries for the similar job and similar training – men receive 37.6% more in average than women. Salary differences in favour of men is confirmed for all employment categories. This salary gap increases for higher schooling levels and job types: it is registered that employed women with incomplete elementary schooling earn 41% less than men in the same condition, while among those employed with incomplete postsecondary education, women receive 40% lesser salaries. The situation worsens for non-formally employed women: those with incomplete elementary schooling earn 42% less, while those with complete postsecondary education levels receive 58% less<sup>200</sup>.

Labour discrimination can also be traced in the academic scope. Although researchers receive the same salary regardless of their sex, there are fewer women that reach the highest posts of the institutional hierarchy of the National Council of scientific and technical research (CONICET): at present, only one woman takes part in its Board.

## Unionization

Another field in which discrimination towards women is to be found is in union representations. The number of women leaders in unions – that is, first degree labour associations – is of 5.5%. In 1999 the CGT Women Institute studied the participation of women in member union organizations’ elections. Results show that from a total of 1.448 union posts (from a sample of the 50 main unions that comprehend unique unions, federations, associations, and confederations; all of which display an important number of women members), only 80 are occupied by women; 61 of them corresponding to minor posts. In 25 unions (50% of the studied unions), women lack of representation. However, 31% out of the 3,856,575 union members are women. This information shows women under- representation within

<sup>200</sup> *Idem*.

the leading posts of union organizations. In unions related to education and social services, women membership rises to 52% and 53% percent out of the total affiliations<sup>201</sup>.

In 2004, a woman accessed for the first time to the tripartite direction of the CGT. Although law N 25.674 on Union Feminine Quota was sanctioned in 2002, establishing quotas for union directive posts, out of a total of 26,304 posts in directive organs, only 4,457 (16.9%) are occupied by women while 31,847 (83.1%) by men<sup>202</sup>. The same discrimination towards women is registered when analyzing the percentage of women that occupy posts in unions, in which the great majority of the members are women, such as: education (32.6%), health (9.8%), clothing industry (4.3%)<sup>203</sup>.

## Education

Discrimination in the educative field can be verified in curricular contents and in the use of language, tending to build gender subordination stereotypes. Gender relations hidden curricula is part of the everyday ways in which learning relations are built within school rooms. Programs contents carry deep sexist contents that are expressed in the text books.

The numerous denounces received lead us to think that discrimination within the educative system is practiced against lesbian teachers, particularly reflected in the little disposition of the Provincial Educational Councils to efficiently apply mechanisms to eradicate those practices.

## Sexual and Reproductive Health

The discussion regarding women's right to decide over their own bodies and the right of couples to decide over family planning is related to diverse ethic and religious issues.

Framed in the respect to personal religion-oriented decisions, a relevant sector of women and men consider that all persons are to have an equal right of access to knowledge and fertility control methods. Such

<sup>201</sup> According to the interviews held with the Tripartite Commission for Equal Opportunities and Treatment in the Labour World of the Ministry of labour, Employment and Social Security, 88% of the total union organizations have legal union character. We lack of information on the Argentine Workers Central (CTA) although consider it is probably of the same nature.

<sup>202</sup> *Idem.*

<sup>203</sup> *Idem.*

access must be guaranteed by the State on a platform of equality between women and couples, regardless of the use individuals make of the corresponding services because of personal convictions. Not having that access, it is said, limits women to decide over their body and reproduction, hence it is a source of discrimination towards women<sup>204</sup>. The problem is even more serious if the lack of appropriate access to information on the subject, in public hospitals and for people of lower classes, is taken into account.

Indeed, although the National Program on Sexual Health and Responsible Procreation has been sanctioned (law N 25.673), it has not yet been applied in many provinces, or done with reticence, thus generating a situation of discrimination to women that prefer to chose by themselves and lack adequate medical assistance. Women of lower classes are in disadvantage regarding those of middle and upper classes for their access to contraception and their sexual and reproductive health care in public hospitals is still of a difficult access.

Tubal ligation and vasectomy are important contra-conceptive methods for cases in which it is not possible to use transitory methods. Nevertheless, in our country they are forbidden by various regulations and by medical professional practice laws<sup>205</sup>. Many couples consider this to be a denial of access to free choice of maternity and paternity, even though the situation is remarkably more disadvantageous for women<sup>206</sup>.

A similar debate is originated over sexual education in schools. Some sectors consider sexual education to be a parental exclusive competence, whilst other positions understand that the lack of sexual education fosters adolescent pregnancies, deepening the discrimination conditions of young women who drop out school when they become pregnant. This situation is worsened when combined with adolescent poverty.

The Ministry of Health and Environment stated that there is an "epidemy of adolescent pregnancies" in the country. Recent official statistics indicate that 3 out of 100 girls and adolescents (between 10 to 19) give birth every year, but the number that get pregnant and practice abortions is

<sup>204</sup> Please refer to the campaign towards a Convention on Sexual and Reproductive Rights by Católicas por el Derecho a Decidir, *Campaña por la Convención de los Derechos Sexuales y los derechos reproductivos*, Cordoba 2004. Interviews in Córdoba, La Plata, Mendoza, Neuquén and Salta, 2003-2004.

<sup>205</sup> Law on Medical Practice N 17.132, art. 20.

<sup>206</sup> Interviews in Buenos Aires, Mendoza and Salta, 2004.

unknown. In the northern provinces, where the highest rates of girl-mothers of the country are to be found, between 20 and 23% of the births correspond to mothers under 19 years of age. In 2002, 15% of the babies born to mothers younger than 19 years old, whilst 3270 babies were born to mothers of ages from 10 to 14 years. In addition, great disparities among provinces are to be noted: while in Chaco the percentage of births of young mothers reaches 23%, in Buenos Aires suburbs (GBA) it is of around 12% and in the city of Buenos Aires, where there is a law on sexual and reproductive health, it is of 6.5%<sup>207</sup>.

According to the Ministry of Health, the national rate of mother mortality is of 4.3 per 10,000 born alive<sup>208</sup> while a total of 92 deaths occurred due to abortions per 10,000 born alive<sup>209</sup>. Abortion in Argentina is the main cause of maternal death. According to the official document sent to United Nations<sup>210</sup>, a research in the city of Buenos Aires showed that deaths due to abortion are 80% higher than the registered ones. The National Institute of Statistics and Census (INDEC) indicates that 37% of pregnancies end up in abortions<sup>211</sup>. Many interviewed women associations consider that without safe and free willed counter-conception with universal access for men and women, discrimination against women is fostered for they suffer the consequences of non wanted pregnancies and abortions. The high rates of death due to abortions are a regretful expression of discrimination against women of the lower sectors of society, referred to the lack of an adequate access to information and to safe contra-conceptive methods. Physical and psychological mistreatment, that many women with septic abortions claim to suffer at public hospitals, makes discrimination even more profound.

## Alimony

Male parents unfulfillment of alimony brings about a discriminatory situation regarding parental responsibility in the upbringing and condemns

<sup>207</sup> Source: Estadísticas Vitales, Ministerio de Salud y Ambiente de la Nación, 2004.

<sup>208</sup> Rate of mother mortality per 10,000 born alive according to place of residence of the deceased. Source: INDEC, 2001.

<sup>209</sup> Mother mortality according to cause of death and age group of the deceased and mother mortality per 10,000 born alive. Source: INDEC, 2001.

<sup>210</sup> CRC/C/70 Add 10, February 26, 2002.

<sup>211</sup> Argentinean NGO Counter-Report to CEDAW Committee: *Derechos Humanos de las Mujeres: Asignaturas Pendientes del Estado Argentino*, Agosto 2002.



many women and their children to marginalisation. Many interviewed women associations estimate that partial or total unfulfillment exceeds 80% of separated males with sons; situation that is not adequately sanctioned in many cases by the corresponding legal and institutional mechanisms<sup>212</sup>.

## Gender Violence

### • Domestic Abuse

Gender violence is the one practiced against women and is motivated by an unequal power relation between men and women that reflects a situation of social subordination and discrimination based on stereotypes, social and cultural practices against the equality of rights. This violence can also be practiced against boys and girls, elderly men and women, and/or handicapped persons in the same power abuse context. Even though a man can be object of violence, particularly when being a child or an elder adult, this happens in a lesser degree when being an adult. The great majority of aggressors are adult males.

Violence against women violates their right to integrity, autonomy, personal freedom and health whilst erodes their full enjoyment of civil, economic, social and cultural rights. Its sole exercise is a violation of the universal principle of non-discrimination and has traumatic immediate and long term effects on women, their sons and daughters and society as a whole.

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women – known as Belem do Pará Convention – was adopted by the OAS General Assembly in 1994 and ratified by our country in 1996 (law N 24.632). Article 1° of the Convention establishes that *“violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere”*. Article 2 adds that *“violence against women shall be understood to include physical, sexual and psychological violence: that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse; that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping*

<sup>212</sup> Interviews in Buenos Aires, Córdoba, Mendoza, Neuquén and Salta, 2003-2004.

*and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and that is perpetrated or condoned by the state or its agents regardless of where it occurs”.*

It derives from the Convention that the State has the obligation of protecting victims, sanctioning aggressors and instrumenting educative campaigns to eradicate the culture of violence. In spite of the fact that there is a national Law of Protection against Family Violence (law N 24.417 and its reglamentary decree 235/96) and that 21 provinces have their own laws against family violence, the institutional mechanisms to protect victims are still insufficient or not always work.

In most cases, laws on domestic violence place competence in civil justice and have rapid mechanisms for the exclusion of the home of the violent person. According to our interviewees, the problem arises when police do not agree to give course to denounces or does not present them to the judges; also, when judges do not act with the required speed or have sexist prejudices in the application of the law.

Although some provinces have “Women Police Stations”, offering in some cases a good service, others lack personnel and adequate training. The Crime Victims’ Office, dependent of the National Prosecutor, has interdisciplinary teams (legal advisors, social assistants and psychological aid) but they still do not have offices in the whole country and, therefore, their coverage results insufficient.

The same happens with hospitals: not all the hospitals in every province have interdisciplinary teams to attend to violence cases. Both in hospitals and schools, professionals are able to detect violence through the damages and attitudes of women and children but they lack places to derive the cases.

In this sense, there is a lack of public policies and integral programs oriented to provide resources for integral attention (psychological, legal, and social) for the victims of domestic violence. Refuges for moments of crisis are scarce and there are no generalized prevention campaigns addressed to the modification of the cultural patterns that legitimize domestic violence. A fundamental aspect that evidences the national State and the Provincial State’s negligence is the very scarce budget appointed to the prevention and sanctioning of these crimes, as well as for the victim’s assistance<sup>213</sup>.

<sup>213</sup> Rodríguez M., *Violencia contra las mujeres y políticas públicas*, Centro Municipal de la Mujer de Vicente López, Buenos Aires, 2001.

In the provinces where legislation against domestic violence exists, regulations are not always respected; for example, the establishment of spaces with privacy conditions and trained personnel at police stations for the reception of domestic violence and sexual crimes denounces. The interviewed groups of women repeatedly claim that the police, in different country jurisdictions, desestimates denounces on domestic violence made by women and that the violent conduct of men is not sanctioned. There are practically no programs addressed to aggressors in the country<sup>214</sup>.

Civil courts, where accusations of domestic violence are presented, many times force women to face their husbands-aggressors in mediation audiences without taking into account the situation of vulnerability in which women are in the majority of the cases. Denounces on judicial sentences with sexist and discriminatory considerations against women have also been received<sup>215</sup>.

#### • Sexual Violence

Both in police stations and hospitals or courts, sexist prejudices can derive into blaming and revictimizing practices against women that have been mistreated or that are victims of sexual crimes. They are displayed in the interrogatories and in the attitudes of suspiciousness towards women that seek for help, being many times *suspected* of causing such a punishment, or labelled as having an "easy life" or as being "bad mother". We have registered several denounces of this nature.

Another subject of extreme seriousness is related to the treatment given to sexual crimes against women. The services of contention measures for the victims are scarce and adequate treatments to prevent pregnancy, transmission of B hepatitis and sexually transmitted diseases or HIV as product of rape are rare. In many cases, the treatment received by rape victims in police stations or forensic medicine revictimise the raped women.

Myths regarding rape are an example of discrimination against women. These myths say that only the beautiful and young are raped; that men only rape when they loose self-control since masculine sexuality is uncontrollable; that women are violated by strangers in lonely dark places; that

<sup>214</sup> Interviews in Mendoza, 2004. Although a Law on Family Violence (N 6672) has been issued, unfulfillment at police stations has been denounced.

<sup>215</sup> It is to be noted, for example, the case of Ivana Rosales in the Province of Neuquén. Interviews in Neuquén, 2003.

women provoked or incited the aggressor or have not done enough to stop them. In fact, all women are potential victims of sexual violation and other sexual crimes. A large number of these crimes take place in the houses and the aggressors are relatives or male friends.

Studies on the treatment of raping of women during the 1976-1983 military dictatorship in the clandestine centres of detention, jails or in their own houses (by the operations groups or groups of repression) have not yet been undertaken in our country.

- **Women Trafficking**

Women trafficking for prostitution is a tenebrous business that is growing in our country. Two trafficking networks were discovered during the last years: involving Dominican and Paraguayan women<sup>216</sup>. They are generally young women that are “hooked up” with the illusion of getting a job in our country: upon arrival they are deprived of their IDs and reduced to conditions of slavery and sexual servitude. Women from Argentinean provinces are also trafficked. There are neither adequate nor enough institutional mechanisms devoted systematically to the prevention, research and sanctioning of trafficking of people, nor regarding women that are being sexually exploited.

- **Violence against women in prostitution situation**

Women in situation of prostitution are one of the most marginalized and discriminated groups of women in our society. Cultural discriminatory patterns towards women accept males to buy sex but discriminate women that sell it. The raise of prostitution is directly related to the raise of poverty and the lack of job opportunities for women. Lack of schooling and training also stimulates this situation.

Contraventional codes usually allow policemen to detain people that exercise prostitution for infringements from 30 to 60 days without judicial intervention<sup>217</sup>. This leads to abuses and arbitrary detentions of women in prostitution situation. Many of them sum up several years of their lives detained in police stations while detentions and sentences to procurers that exploit their sexual work are rare, criminally typified felony in

<sup>216</sup> Organización Internacional para las Migraciones, *Migración, prostitución y trata de mujeres dominicanas en la Argentina*, Buenos Aires, 2003. Buenos Aires.

<sup>217</sup> Please refer to the *Security Forces* chapter.

Argentina. Women in prostitution situation state that upon arrest they are forced to sign the recognition of their culpability. If they do not, they are generally hit, fined (hence obliged to work more) and many times obligated to have free sexual intercourse with policemen. It is to be noticed that that many of them have children that remain unsheltered during these periods of arbitrary detention.

According to the denounces received, in some provinces they are kept under very bad detention conditions: without beds, mattresses, blankets, with broken or filthy toilets, with glassless windows, no heating and food in bad conditions. Compulsive HIV examinations are usually taken and if they result infected, they are kept detained for longer periods.<sup>218</sup>

If the judiciary power usually fails in admitting denounces on family violence, this situation is aggravated in the case of women in prostitution situation. Several provincial courts deny to take denounces for arbitrary detention. We have received several denounces in which assassination or disappearance of women in prostitution situation were not investigated. There is, in many occasions, a prejudice stating that those episodes are "part of the job"<sup>219</sup>. When women in prostitution situation try to make a police denounce, they are subdued to mistreat and are discriminated at courts.

Denounces of cases in which women that practice prostitution were denied of hospital attention or medicines to avoid attending them have also been received.<sup>220</sup>

## Indigenous Women

Indigenous women suffer of a triple discrimination in our country: for they are women, indigenous and poor. Humiliation is the word they use to clearly illustrate the discriminatory treatment they receive in educative institutions, health institutions or public administration. They are permanently feeling under-valued and inferiorized in attitudes, through language, in the long waits<sup>221</sup>.

<sup>218</sup> Interviews in Buenos Aires, Córdoba and La Plata, 2004.

<sup>218</sup> There exist an important number of unsolved cases of sexual workers killed and/or kidnapped in Córdoba, La Pampa, Mendoza and Rosario. Interviews in Buenos Aires, Córdoba and Mendoza, 2004.

<sup>220</sup> *Idem*.

<sup>221</sup> Conclusions of the IV Encuentro de Mujeres Indígenas, held at Tartagal in May 2004. Interviews in Formosa and Salta, 2004.

The highest rates of illiteracy, maternal mortality and poverty are to be found amongst indigenous women. In some regions of Chaco, Formosa, Salta and Misiones women only talk their own language and do not receive bilingual education stipulated by law. Many of them lack National ID and hence do not access social plans that correspond to their social situation. They suffer of violence within their households and in public and private institutions. Police does not take their denounces, they lack access to all types of juridical advise and many of them lack knowledge of their rights as citizens, as women and as indigenous<sup>222</sup>.

### **Migrant Women**

Migrant women are also a group that are object of discriminatory treatment in institutions and public space. Discriminatory attitudes take place in hospitals when migrant women go to give birth. Discriminatory expressions such as *“you came to have your brood!”* have even been stated. Denounces of cases of xenophobic aggression against migrant women of neighbouring countries show the persistency of those attitudes in our society. Women in situation of migrant irregularity are the most exposed to be exploited labourly on account of lack of knowledge of their rights and mechanisms on access to residency.

### **Media**

Discrimination against women is systematic and daily in mass media, as established in the corresponding chapter of this book. Male denigrant and objectifier language towards women is still pre-eminent, as well as a denigratory reference to feminine sexuality for commercial use. For example, rapping is generally left for police pages and treated in the context of the so-called *“yellow press”*. Derogatory references to women in prostitution situation are also frequent, while TV and radio jokes are repeated examples of the male discriminatory focus.

### **Beauty patterns**

The pattern of feminine beauty imposed by the market corresponds to the stereotype of a young, thin, tall and blond woman that does not match the

<sup>222</sup> *Idem.*

characteristics of our population. Women that do not correspond to this model often suffer labour discrimination, clothing size discrimination, and are subdued to mistreatment in the street. Fat, old, indigenous or handicapped women are discriminated based on that aesthetic model<sup>223</sup>.

Even though there is a law that demands clothing shops to have big sizes available, this resolution is not fulfilled. This beauty model –imposed as the key for social and economic success– has generated specific psycho-cultural diseases: anorexia and bulimia, that cause harm amongst the adolescents. At the same time, a market of aesthetic surgeries not controlled by the State was developed. Cases of lesions, and even deaths, caused by lipo surgery or silicone implant operations are well known.

### **Political and Institutional participation**

Even though women have an active militant participation in political parties, they have nevertheless been discriminated at the moment of post allocations. The Law of Feminine Quota N 24.012 was sanctioned in 1991 establishing the list of elective posts of each party to be integrated by at least 30% of women. The application of the law on behalf of the political parties has been discretionary, not always leaving space for women with more capacity and hence distorting the spirit of the law. Regarding National and Provincial Ministries and Secretariats, there is a clear gender discrimination against women.

*Please refer to proposals N 3, 17, 18, 24, 25, 49, 52, 54, 59, 66, 67, 83, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 103, 201, 234, 236, 237, 238 and 239.*

<sup>223</sup> Please refer to the Transversal Axis *Racism* and the *Media* chapter.

## SEXUAL IDENTITY\*

A notion of a unique, normal, healthy and legal sexuality was historically legitimized in our society. This notion denies the evidence of the existence of diverse and different sexual orientations and gender identities. Religion and medicine attempted to define and set discipline upon sexuality by classifying it in two sexes. Binary codes have been established based on supposed unquestionable biological principles and hence instituting hierarchies and inequalities that were consecrated as legal through State norms, denying the right of sexual identity to a considerable number of human beings that cannot – nor desire to – be located in this order for they recognize a diversity of different sexual identities<sup>224</sup>.

Sexual identity is built through a complex process in which a multiplicity of variables – that are not to be here discussed – in the history of the individuals operate. It is nevertheless important to recognize that there is in our society a spectrum of different expressions of sexuality: gays, lesbians, bisexuals, homosexuals, transvestites, transsexuals, transgender, intersexuals, etc.<sup>225</sup>. In any case, and to avoid taxonomic prescriptions, we assert there is a diversity of sexual orientations and identities<sup>226</sup>.

People with different sexual orientations and gender identities are

\* **We thank Flavio Rapisardi for his collaboration in this chapter.**

<sup>224</sup> Conrad M., Schneider J., *Deviance and Medicalization*, Merrill Publishing Company, USA, 1981.

<sup>225</sup> While in the rest of the world the notion of transvestites is no longer used and transsexual is used instead, in Argentina the word “travesty” was politicized and used as a mode of action and resistance.

<sup>226</sup> According to UBA’s Area Queer, the general accepted statistics of our country state that one out of every 100,000 men and every 300,000 women is transsexual. The Area of Queer Studies depends on the Fundación Laboratorio de Políticas Públicas and the Rectorate of the Faculty of Philosophy of the University of Buenos Aires.



amongst the groups of human beings discriminated in our society. Special negative labels and pejorative and offensive epithets are used against for them.

Feelings of despise and contempt, that may reach violence and aggression, are called homophobia. Homophobic and misogynous positions evidence intolerant postures and attitudes that aim to control the lives of the people and limit their autonomy through procedures that are particularly aggressive and little respectful of plurality.

Violence against GLTTTBI people (Gay, Lesbian, Transsexual, Transgender, Travesti, Bisexual, Intersexual), that can end up in murder or disappearance show, extreme forms of discrimination against people due to their sexual orientation. Treatment received by gay and lesbian people in the concentration camps during the 1976-1983 Dictatorship was particularly sadistic and violent, as the one received by disappeared people of Jewish and other discriminated groups of our society<sup>227</sup>.

Nevertheless, there are other and more subtle mechanisms equally harmful that express discrimination towards people with different sexual orientations or identities. Lesbianism is usually more combated and hard to visibilize. In this case, discrimination due to the feminine gender subordination in our society is also added.

Homophobia operates, according to Warren J. Blumenfeld in four different but intertwined levels: personal, interpersonal, institutional and cultural (also called collective or social)<sup>228</sup>.

*Personal* homophobia is referred to a personal system of beliefs and prejudices through which people – with different sexual orientations – inspire compassion and/or hate because they are considered disturbed, genetically defective or non-adapted that therefore contradict the “laws of nature”.

*Interpersonal* homophobia is manifested when an indisposition or personal prejudice affects relationships between individuals hence transform-

<sup>227</sup> During the dictatorship of 1976-83 assassinations of gay people took place in Capital Federal and Buenos Aires. These crimes were never clarified. Cultural centers and gay artists were also persecuted. In June 1982 a self denominated “Comando Cóndor” warning to all the journals alerting them to finishing with musical theatres and homosexuals. Rapisardi F. y Modarelli A., *Fiestas, Baños y Exilios. Los gays porteños en la última dictadura*, Editorial Sudamericana, Buenos Aires, 2000.

<sup>228</sup> Please refer to the Introduction by Blumenfeld W.J. to the compilation titled *Homophobia: how we all pay the price*, Beacon Press, Boston, 1982.

ing prejudice into active discrimination. Some examples of interpersonal homophobia are nicknames and “jokes” that aim to insult or defame persons or groups; physical or verbal aggression and other modes of extreme violence; the retreat of support, rejection, abandonment by friends or other mates, by work colleges, relatives; the denial of house rentals and shop tellers to provide services; or insurance companies to broadening their coverage and bosses to hire based on a real or attributed sexual identity<sup>229</sup>.

*Institutional* homophobia is referred to the ways in which government, business, educative or religious organisms systematically discriminate due to sexual orientation or identity. Sometimes laws, codes or normative are in charge of *legalizing* that discrimination.

For example, some health or criminal institutions deny the right of partners of the same sex to access to pay visits when one of them is hospitalized or detained, alleging that only visits of consanguineous relatives or the legitimate wife are permitted.

*Cultural* homophobia is referred to social norms or codes of behavior that without being expressed in a law or normative, work in society to legitimize oppression. As a consequence people hide their sexual orientation or silence it when history is written. An example of this is the hiding of sexual orientations of artists or writers that have made important contributions to national or universal culture. Other examples of cultural homophobia is the negative stereotyping towards these groups, or their segregation from public spaces while addressing *ghettos* or “red zones” to them<sup>230</sup>.

Other way in which institutional homophobia is expressed in Argentina is the denial of juridical status to the organizations that defend the rights of people with different sexual orientations or gender identities<sup>231</sup>.

## History of the movement of defense of rights

Nowadays there is in Argentina an important movement of organizations that defend sexual orientation and diverse gender identities. They generally intend to avoid the use of the term “sexual minorities” for considering it as

<sup>229</sup> *Idem.*

<sup>230</sup> *Idem.*

<sup>231</sup> For example, the denial of juridical status to ALITT (Asociación de Lucha por la Identidad Travesti y Transexual).

belonging to the liberal North American tradition. They neither consider appropriate the use of the notion “sexual option” because it presupposes a will; this they question because it could imply possible punishable connotations in the context of our repressive society.

Prior to the Dictatorship there were various movements for the defense of the rights of the people with diverse sexualities and gender identities. The Dictatorship fostered the disappearance of these movements whilst creating a scenario of persecution against Argentinean homosexuals. There are thousands of cases of police persecutions and tortures during that period against them.

*Hate crimes*, this is violent assassinations against GLTTTBI people, took place during the last Dictatorship based on the sole fact of their sexual orientation and gender identity<sup>232</sup>.

Regarding *travesties*, the Queer Area of the UBA informs that their situation during the last Dictatorship was specially complicated. An informal record accounts for the existence of 110 assassinated *travesties* under suspicious situations (on the road, the streets, in their houses). They claim that these cases are generally not investigated nor clarified<sup>233</sup>.

At the end of the Dictatorship and at the beginning of the democratic transition, organizations worked – with little success – for the inclusion of free sexuality in the agenda of the human rights organizations that were born in the struggle against Dictatorship. Reflection about questions related to identity gave place to the GLTTTBI movement.

Nevertheless, strong police persecutions and raids based on police edicts and the identity investigation led several of these groups to organize in the struggle against repression and against the attempts to regulate the practice of prostitution while other organizations emphasized in subjects such as AIDS prevention or sexual identity.

More recently some academic spaces, such as the Area of Queer Studies, have been organized. There, people considered “queer” and specialists work and research on this new field while the silenced voices have been made visible and new political strategies, facing discrimination

<sup>232</sup> Rapisardi and Modarelli (*op. cit.*) state that the case of a supposed “serial murderer” that killed about 20 people during the last years of the Dictatorship is well known. Strong suppositions of police participation in those murderers are stated in the gay “field”.

<sup>233</sup> *Idem.*

are designed. The collaboration of well-known psychoanalysts and other health professionals and social scientists resulted of great importance<sup>234</sup>.

The development of women lesbian organizations, some of them with feminist orientations, has contributed to the debate and the making visible of this problematic. Amongst the objectives of these organizations it is having their own voice or varied expressions (containing a multiplicity of dimensions) for the lesbian movement, making visible the situation of lesbian women and the multiple discriminations they suffer, braking the stigmas and prejudices, and fostering a culture of respect, freedom and autonomy for the "women that love women".

In the interior of the GLTTTBI movement, as in all the other social movements, there is a spectrum of political and cultural positions regarding the formation of political agendas, demands, strategies, and programs of action. At the same time, logics of class differences, gender identity, age, ethnic and geographical precedence operate.

The social and political crisis lived by Argentina in 2001 and 2002 obliged some groups to articulate their demands regarding poverty and repression. Another central theme is related to the conquest of civil rights such as the Civil Union in the city of Buenos Aires, or cultural rights<sup>235</sup>.

### **Juridical advances in the recognizing of rights of sexual diversities**

It is difficult for the international community to recognize the rights of the so-called "sexual minorities"<sup>236</sup>. Nevertheless, in Argentina, with differences in each Province, different sectors of civil society start to consider the right of every person to freely choose sexual orientation and fully living it – without fearing social rejection and enjoying legal guarantees that did not exist a short time ago in any country of the world. The accomplished goals regarding sexual diversity are of a juridical and cultural character and are the result of the work of all the priory mentioned social and political organizations that joined it. Nevertheless, these advances were fundamentally

<sup>234</sup> Among others, Eva Giberti, Alfredo Grande, Isabel Monzón and Juan Carlos Volnovich.

<sup>235</sup> In the context of poverty trasvesties groups are the most active in the struggle against police repression against prostitution.

<sup>236</sup> In 2004, the voting for a resolution (impelled by Brazil) aiming at the recognition of the rights of the so-called "sexual minorities" was postponed for a second time within the United Nations Human Rights Commission.

circumscribed to the city of Buenos Aires, while in some Provinces and small cities of the rest of the country a much more conservative profile regarding the subject is being kept.

Debate on illegitimacy of discrimination started to be held in the cultural arena, on mass media as in academic discussions and the problematic on sexual discrimination is hence being more visible.

The following norms were sanctioned in the legislative field: national anti-discrimination law; anti-discrimination clauses in the Constitution of the Autonomous City of Buenos Aires and in the legislation of the city of Rosario; Civil Union law in the city of Buenos Aires; possibility of legalizing concubinage of partners of the same sex in the Province of Rio Negro; normative allowing the entrance to motels. The process was joined by judicial sentences authorizing the change of documents and surgical interventions in the same sense, and others. Participation and organization of GLTTTBI groups has demonstrated its efficacy in the struggle against HIV/AIDS. Social gaps imposed by poverty and discriminatory social practices are far from being overcome.

In spite of the mentioned advances, human rights of GLTTTBI people are still being violated in a systematic and persistent way. There is also a positive correlation between poverty and sexual orientation or gender identity and discrimination: the poorer people are, the more they are discriminated and their rights are violated<sup>237</sup>.

### **Discriminatory mechanisms**

Our society has developed sophisticated mechanisms of discrimination tending towards the negation of the existence of these sexual orientations and gender identities, showing a number of situations and obliging people to hide their sexual preferences for not suffering serious family, social, economic and political consequences, etc.<sup>238</sup>

When to a different sexual orientation or sexual identity is added that the people are poor, suffer a certain stigmatized disease or belong to any migrant group, indigenous group or have different political opinions, discrimination and marginalisation to which they are subjected increases.

<sup>237</sup> Interviews in Buenos Aires, La Plata and Mendoza, 2004.

<sup>238</sup> *Idem*.

This is the case of a great number of travesties for which prostitution becomes the sole labor opportunity hence increasing discrimination and marginalisation.

Media can help to strengthen discriminatory stereotypes as help in the legitimization of the existence of sexual diversity. Nevertheless, in general, these spaces of communication are kept for a reduced number of people and not for the great majority that suffers daily discrimination<sup>239</sup>.

The press, generally treats diverse sexual orientations in a “yellow press mode”, or solely alludes it in a sensationalist manner when felonies against people of a different sexual orientation take place, while underlying the “homosexual” character of the victim as if the outcome was inevitable due to the victim’s “condition”<sup>240</sup>.

Laws of the market in some cases evidence widespread social hypocrisy. From the information collected by our interlocutors, in Mendoza in the only moment in which article 80 of the Municipal Code<sup>241</sup> is not applied is during the Harvest Feast because it is convenient for tourism. There is also a Gay Harvest Feast. The rest of the time travesties are persecuted and imprisoned<sup>242</sup>.

### Civil and political rights

When the measures to clarify beliefs and negative valorizations on homophobia on behalf of the State are not taken, exclusion and marginalisation of these groups takes place and the legal, civil and political guarantees of every human being are limited, with the aggravation that potential situations of aggression and violence are not taken into account. .

In interviews with different GLTTTBI organizations it was stated that the most habitual forms of discrimination they suffer in the exercise of their rights are:

- The lack of a legislation recognizing civil union of couples of the same sex in most provinces. This brings about all kinds of difficulties to the

<sup>239</sup> *Idem.*

<sup>240</sup> *Idem.*

<sup>241</sup> “Any person dressed differently to its sex in public shall be privated from freedom for 15 days or shall pay a fine of 1,500 pesos”.

<sup>242</sup> Somethig similar is happening in San Telmo (Capital Federal), where GLTTTBI is “tolerated” because it attracts tourism. Interviews in Buenos Aires and Mendoza, 2004.

couples: in relation with inheritance of goods, social care, pensions, visits in the case of disease or detention, etc.<sup>243</sup>;

- In most of the provinces when anti-discriminatory laws exist, sexual orientation and gender identity discrimination is not included. There are projects of law that are frozen and hence do not become subjects of debate for their approval<sup>244</sup>;
- In the case of gays and lesbians, the loss of possession of their kids is due to sexual orientations although other causes might be alluded;
- Obtaining their national IDs is the most frequent problem for transsexuals for it does not indicate the gender of the person, provoking all types of problems in the exercise of their citizen's rights;
- GLTTTBI community lives as discrimination the right of same sex couples to adopt children as heterosexual couples do;
- In addition, in our interviews, the frequent withdrawal of fundamental rights in police dependencies to gays, travesties and transsexual was denounced. In a similar way, robberies and bribes – for not publicly telling the sexual identity of the detained – on behalf of police officers are also mentioned<sup>245</sup>;
- Lack of preventive measures by the State in occasion of death threats or call to homophobic violence on behalf of conservative sectors;
- In addition to the inhuman conditions of detention that characterize our jails, gays, travesties or transsexuals accused or condemned of a crime are located with other detained people that rape them and are aggressive to them and are subdued to verbal mistreat and permanent humiliations;
- Police persecution against people that practice prostitution through arbitrary detentions and bribes is alleged. The interviewed organizations explain that in many occasions people are stopped for carrying more than two condoms; therefore we are in front not only of police persecutions but of police practices that foster dissemination of AIDS and other sexual transmission diseases. False accusations that derive in application of Drugs Law (N 23.737) or the making of legal causes or the

<sup>243</sup> VVAA., *Adopción: La caída del prejuicio. Proyecto de Ley Nacional de Unión Civil*, CHA, Buenos Aires, 2004.

<sup>244</sup> In Córdoba, for example, antidiscriminatory laws for sexual minorities and civil union were presented in April 2002 and none of them were discussed.

<sup>245</sup> Interviews in Buenos Aires, Córdoba and Mendoza, 2004.

denial of the right of appeal when people are detained due to supposed infractions against the Contraventional Codes<sup>246</sup>;

- Contraventional Codes in most provinces give police discretionary faculties to stop people for supposed infractions against the public moral. This practices, according to the organizations, “*legitimize every class of abuses and police corruption*”. According to the interviewed groups, a simple manifestation of affection between people of the same sex in the street is usually a motive for detention<sup>247</sup>;
- To make it worse, in some police stations, the right to make denounces to GLTTTBI people when they are victims of felonies is denied.

### **Economic, social and cultural rights**

The following situations were pointed out by the interviewed organizations as discrimination faced in the fields of economic, social and cultural rights.

#### **• Education**

Transsexuals live their identity as a tearing process. Sexual identification process takes place during childhood and adolescence, yet educational institutions and teachers have no training to aid and accompany people through this process and when students do not adopt the expected norms are frequently punished and expelled from school.

#### **• Health**

The law on medical science professional practice denies the surgical change of sex, condemning transsexual people to clandestine medical practices with all the risks and abuses that brings about<sup>248</sup>. Medical professionals are formed in an exclusively biologist mode and are frequently not prepared to approach the complex problematic of sexual diversity; therefore there is a lack of orientation regarding the use of hormones, silicone implants, surgery, etc. This is aggravated when people are of scarce economic resources and cannot have access to expensive private treatments<sup>249</sup>.

<sup>246</sup> Interviews Buenos Aires, La Plata and Mendoza, 2004.

<sup>247</sup> A travesti person that is about to graduate as a doctor is, according to testimonies, being obstaculized. Creation of preventive action commands (CAP) “*has a considerable repressive effect*”. Interviews in Córdoba and Mendoza, 2004.

<sup>248</sup> Please refer to article 19 of the above mentioned law.

<sup>249</sup> Interviews in Buenos Aires, 2004.



Medical and psychological practice classifies transsexuality as a “gender identity disruption”. When a transsexual person asks for a surgery due to understanding that his/her own personal attributes as not concordant to their sexual identity it is because *“the binary identity norm that disciplines the bodies and the sex/gender relationship is disrupted, repressing desire”*. According to psychoanalyst Ana Fernandez, to whom the quote belongs to, what is being questioned is *“the academic and theoretic nomenclatures, (...) that also imply a political and ethical interrelation for human rights”*<sup>250</sup>.

Discriminatory treatment received at public health services is frequent. In various cases, health care for transvesties has been denied if a negative examination on VIH was not presented or they have been sent to the infectious-contagious room although they did not suffer any kind of disease<sup>251</sup>. They generally state that places where they are interned are inadequate for their gender identity.

Deficiencies in the campaigns for the prevention of HIV/AIDS have been detected. National divulgation is considered as fundamental. An aspect mentioned by the organizations is that an inferior number of GLTT-TBI people is considered when distributing resources belonging to the HIV/AIDS prevention programs hence the assigned products result insufficient and generate discord amongst the organizations<sup>252</sup>.

Several interviewed people affirm that it the practice of compulsive HIV/AIDS examination is usual – hence violating law N 23.798 – in private enterprises and in State dependencies.

They also alert that are discriminated when attempting donate blood. They express that couples of the same sex are not allowed to take care or visit their partner at health institutions.

#### • Labor

There is consent amongst all the interviewed GLTTTBI people about the right to work as being the most violated right. They explain that, although their orientation is not invoiced as a motive, when it is known in labor contexts very usually ends up in firing. This situation is usually seen in the field of education and for example in the case of lesbian teachers.

<sup>250</sup> Fernández A.M., “Acerca de los transexuales y del vivir-ser” en *Página 12*, 3 de febrero de 2005.

<sup>251</sup> Interviews in Buenos Aires, La Plata and Mendoza, 2004.

<sup>252</sup> Interviews in Buenos Aires, 2004.

Sexual harassment, insult and homophobic discrimination are a daily experience to a great number GLTTTBI people at their working places.

*Please refer to proposals N 17, 19, 20, 21, 22, 53, 102, 103, 205, 237, 240 and 245.*

# MIGRANTS AND REFUGEES

## ■ Migrants

Immigrants are defined by the new Law on Migrations (N 25.875) as every foreigner who wishes to enter, to travel around, to reside, or to definitively settle down temporarily or transitorily in the country, as established by the corresponding norm.

Argentina's position in the subject has changed during the three World Conferences on Population: In Bucharest (1974), *Argentina considers the migratory policy as an alternative policy of population control (...)*; in Mexico (1984) *migrations are visualized a high-priority subject*, and in Cairo (1994) *the subject is associated to economic productivity (...)*. All the positions agree in promoting selective immigration<sup>253</sup>.

Law N 25.875 does not follow the selective immigration policy paradigm that supposed the attraction of European migrants, as established by the National Constitution, and fixes its objectives as follows:

- a. To fix the fundamental political lines and to lay the strategic foundations in migratory matter so as to fulfill the international commitments of the Republic in the matter of human rights, integration and migrants mobility;
- b. To contribute in the accomplishment of demographic policies established by the National Government with respect to the magnitude, rate of growth and geographic distribution of the population of the country;
- c. To contribute in the enrichment and strengthening of the cultural and social weave of the country;

<sup>253</sup> Oteiza E., Novick S., Aruj R., *Inmigración y Discriminación. Políticas y discursos*, Trama Editorial – Prometeo Libros, Buenos Aires, 2000, p. 130.

- d. To guarantee the fulfillment of the right of family reunification;
- e. To promote the social integration of people who have been admitted as permanent residents in Argentina;
- f. To assure everyone asking to be admitted in the Argentine Republic permanently or temporarily, the enjoyment of common criteria and non-discriminatory procedures of admission, in terms of the rights and guarantees established by the National Constitution, the international treaties, the effective bilateral agreements and the laws;
- g. To promote and to spread the obligations, rights and guarantees of the migrants, according to the National Constitution, the international commitments and laws, while maintaining the open and humanitarian tradition towards migrants and their families;
- h. To promote the insertion and labor integration of the immigrants who legally reside for the better enjoyment of their personal and working skills in order to contribute to the economic and social development of country;
- i. To ease the entrance of visitors to the Argentine Republic for the fostering of commerce, tourism, culture, science, technological activities and international relations;
- j. To promote international order and justice, denying the entrance and/or the permanence in the Argentine territory to people involved in acts repressed by our criminal law;
- l. To promote the exchange of information in the international scope, and the technical attendance and qualification of the human resources, to prevent and fight against international organized crime.

Discriminatory practices against migrants in Argentina are rooted in the constitutional text: article 25 of the National Constitution, that was not modified by the 1994 reform, maintains the 1853 statement that establishes the preference of European immigration over any other. The 1853 Constitution derives from the ideas of liberalism of the time and from its program for the construction of a modern nation. Therefore they fostered northern European immigration – that was to transform the society by changing its indigenous and Spanish inheritance – by promoting freedom of industry, commerce, expression and work, inviolability of the property, reinforcement of national peace, and through the citizens' exercise of political rights.

Nevertheless, immigrants who arrived between the end of the XIX cen-

tury and beginning of the XX were not from the north of Europe as Sarmiento and Alberdi imagined. Migrants were people that had been expelled from the process of European modernization: farmers, refugees, workers, Anarchists and Socialists. They came from the poorest regions of the South of Europe: mainly from Spain and Italy but also from France, Germany and other regions. They were Catholic, but also Atheistic, Agnostic, Protestant, Jewish, as well as Muslim. The traditional oligarchy reacted before this “threat” by founding its position on a biologicist positivism. This theoretical framework was productive for their imposition of a “social order”: by stating the possibility of choosing the apt ones whilst disciplining, subjugating, eliminating or expelling others, including “the Barbarian” Europeans, natives, *mestizos* or black.

Already in the XX century, this theoretical rationality was based in the rejection of all immigration coming from neighbouring countries and of those who – as indigenous people – were deemed as “lazy, drunk and trouble-makers”<sup>254</sup>.

It is important to underline that along the decades, migration has been closely related to the notion of National Security, that fostered – alongside with the international policies – restrictive criteria that finally denaturalized one of the cornerstones of the making of the Argentinean nationality.

It is important to prevent the new law on migrations from changing its perspective by the making of normative different to its purposes and contents. Training for State employees in the new contents of the law (with a special emphasis in the new principles of the law, State obligations before the international community and in subjects referred to human rights) is hence required. Employees should be trained in the notion that terrorism is not fought against by combating migrants.

Migration from bordering countries was relevant and continuous since the very origins of Argentina. Rejection against it is built on a racist set of

<sup>254</sup> “To facilitate the Indians conversion the Jesuits learnt their language. In this way the Indian God, Tupa was soon replaced in the heart of the guarany people by our god. With patience and strength they taught them to appreciate mate rather than the alcoholic beverages to which they were addicted to. To respect the sacrament of marriage so as to make them abandon the habit of having more than one wife. To know diverse occupations hence combating their natural inclination to leisure”. Text book for 2<sup>nd</sup> and 3<sup>rd</sup> Cycle, Misiones National University, 1966, p. 110. Quoted by Macus C., *La construcción de la figura de José Gervasio Artigas en el sistema educativo Misionero*, mimeo, 2003.

ideas defining them as the ones responsible of our deprivations. By so doing, the effect of a model of accumulation of wealth that tends to concentrate it on a minor sector of the population is disregarded. An article published in an Argentine weekly magazine is an example of this: under the title "The Quiet Invasion", the text states that "*Illegal foreigners represented already two million of the inhabitants of the country. They use public schools and hospitals. They take jobs away from the Argentineans. Some of them are criminals and are not deported. They do not pay taxes. While politicians look away*"<sup>255</sup>.

This type of speech contributes in the making and support of the discriminatory stereotypes while transferring to the collectivities of migrants their own social frustration. Victims are selected and are presented as victimizers and responsibilities are hence deviated.

According to the interviews held all over the country, the following are amongst the most habitual modes of discrimination against the different migrant groups in Argentina<sup>256</sup>:

- **Documentation.** It is necessary to monitor the searches unfolded on the foreigners who have not got documents, trying to avoid, as much as possible, administrative dispositions that can jeopardize the protection of their fundamental rights. In that context, it would be important to avoid asking people that are doing the required three-month term to stay in Argentina, documents such as criminal records that can only be found in their countries. Very often migrants leave their countries due to economical reasons, and generally lack of economic resources that could allow them to return to their countries in the search of documents. Requirements of almost impossible fulfillment encourage the activities of *gestores*, who, in many cases keep the money from those whom they claim to be representing. This is a situation of discrimination that maintains people in administrative irregularity, therefore limiting their residence. It is also important to underline that the National Migrations Direction and some of its offices have set mobile desks in areas where migrant population live with the aim of solving – in a direct and inexpensive way – those problems that keep them from regularizing their situation.

<sup>255</sup> Please refer to Maganize *La Primera de la Semana*, N 3, April 4<sup>th</sup> 2000.

<sup>256</sup> Interviews in Buenos Aires, Córdoba, Formosa, Mendoza, Misiones, Neuquén, Río Negro, Salta and Tierra del Fuego, 2003-2004.

- **Education.** The educative system often builds or strengthens discriminatory mechanisms or does not foster the required attitudes to withhold children from reproducing them<sup>257</sup>. Hans J. Phule says: *“school books – specially relevant in the ideological and political field of history – sometimes maintain obsolete notions and stereotypes that are not necessarily linked to scientific discoveries. These principles are specially effective for they have a positive or negative influence on a social potentiality oriented towards development and politics”*<sup>258</sup>.

Argentine children (sons and daughters of immigrants) with a non-normalized document situation frequently face problems that withhold them from receiving certificates of studies when an educative cycle is over. Children or youngsters that have earned a scholarship have problems in the enjoyment of it due to their migrant condition<sup>259</sup>.

Language is an additional difficulty faced by migrant children from neighboring countries that do not talk in Spanish. The educative system lacks of a good disposition to fit teaching and learning conditions to this situation. There is a lack of teacher’s training in the subject as well as additional Spanish classes, and flexibilization of the evaluation system.

- **Labor and social security.** The lack of documentation fosters the illegal hiring of migrants, depriving them from the minimal juridical guarantees and exposed to vulnerability and exploitation. Useless requirements and of impossible fulfillment for the obtainment of a residence, impossibility to access to public health care, police harassment and miserable wages, close the circle of state responsibility in this particular mode of discrimination.

Migrant elder adults lack of suitable social protection and of any recognition to the contributions made by them in their original countries. As there is no inter-State agreement for the correct recognition of the contributions made in their original country, elder adults face – when migrants – a condition of permanent abandonment.

All of the problems listed above plus the bureaucratic barriers makes

<sup>257</sup> Please refer to the *Education* chapter.

<sup>258</sup> Puhle H.J, “Política de desarrollo y nacionalismo en América Latina en el siglo XX” in Riekenberg M., *Latinoamérica: enseñanza de la historia, libros de textos y conciencia histórica*, Alianza editorial, FLACSO- Georg Eckert Institut, Buenos Aires, 1991, p. 21.

<sup>259</sup> Interviews in Misiones, Neuquén and Tierra del Fuego, 2003-2004.

these migrants – considered “illegal” – vulnerable to corruption and people traffic.

- **Health.** Illegal migrants and those with a precarious residence are without access to public health care. Functionaries and professionals have assured us that they receive attendance when under emergency though. Anyway, the lack of medical records denies the possibility of medical follow up.
- **Security.** Struggle against the lack of security largely affects migrants. Complaints on the arbitrary way by which police officers detain them have been received. They are stopped under the figure of prowling and solely because they have indigenous aspect or, as they call it, “for their looks”. A hardening of the police breaking into their places and occupation of areas in which migrants live has been registered. Denounces on subtraction of personal goods and intimidating proceedings on behalf of the police officers are to be underlined amongst the most serious denounces received.
- **Housing.** Migrants’ access to the social plans in which houses are granted is difficult for they lack the required documentation to be included in the plans. The situation of permanent residents with Argentinean sons and daughters is also serious for it has been said that they are delayed before Argentinean citizens.

*Please refer to proposals N 4, 17, 26, 69, 124, 125, 127, 128, 129, 130, 131, 134, 159, 183, 184, 188, 205, 223 and 238.*



## ■ Refugees

### The international framework

The practice of offering protection to unfairly persecuted foreigners is very old and seems to be bound to the tradition of hospitality of the nomadic peoples. The number of cases of asylum in history is countless and it is an institution also present in the oldest legislative bodies. Nevertheless, it is interesting to note that the first international regulations of asylum, particularly the one called “diplomatic asylum”, appeared in America with the six Inter-American conventions referred to the issue. The first one was signed in Montevideo in 1889<sup>260</sup>.

The issue gains further projection after the First World War, when millions of people were unprotected, not only because of the combats, but also because of the territorial redistribution that the dissolution of the Austro-Hungarian and Ottoman empires implied. The necessity of receiving these victims caused the relocation of enormous populations inside and outside Europe. Foreigners from the center of Europe and Middle East arrived to several countries of America, specially Argentina. Most of them travelled with a document known as “Nansen Passport” (emitted to benefit of those who did not have identification papers), that was recognized by 52 countries<sup>261</sup>.

A similar problem was faced after World War II when displacements of large contingents took place (an estimate number of 30 million). These were not only war victims but also of the massacre and racial persecution produced before and during the fight. The Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR) was approved by the end of 1950 and it was put into practice on January 1, 1951. On July 28, 1951 the Convention on the Status of Refugees – international currently used document – was signed. By means of that document refugees were defined, their rights were settled and diverse matters related to their pro-

<sup>260</sup> The six Inter-American documents referred are: *Treaty on International Criminal Law* (Montevideo, 1889), *Convention on Asylum* (La Havana, 1928), *Treaty on Asylum and Political Refugee* (Montevideo, 1939), *Convention on Diplomatic Asylum* (Caracas, 1954) and *Convention on Territorial Asylum* (Caracas, 1954).

<sup>261</sup> The biologist and explorer Fridtjof Nansen was the first High Commissioner for Refugees designed by the Society of Nations and who promoted this passport, that is called after him.

tection and attendance were regulated. If the origin of this instrument was the particular situation created in Europe (and for that reason an alternative of geographic limitation in its application exists, called "geographic reserve"), the issue of refuge was extended to other situations outside the Continent and had universal character in short<sup>262</sup>.

At the beginning of 2004 the number of people sheltered by UNHCR round the world was of 17.1 million (including applicants of asylum, repatriated, domestic displaced people, etc.). The current situation is better than the one outlived in previous years in which the number of people under protection raised to 23 million<sup>263</sup>. Anyway, considering that the number of refugees is almost directly tied to the violent conflicts that take place, nothing guarantees this reduction to continue.

### The definition of refugee

According to the 1951 Convention, *"the term 'refugee' shall apply to any person who (...) owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country"*. For the case of Stateless Persons it adds, *"or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it"*<sup>264</sup>.

As it is noticed, the definition establishes the precise causes of persecution (political, race, religion, nationality, pertinance to a social group or opinions). It introduces, in addition, the concept of "well-founded fear" in order to suitably determine the nature of the persecution while admitting objective ("is unable") or subjective ("is unwilling") factors alleging the impossibility to return to their original country. The fact that to become a refugee, a person is to be outside its original country is to be taken into account. This definition is classic and it is applied in all the countries ratifying the Convention<sup>265</sup>.

<sup>262</sup> See, among others, *Declaration of the Haghe on the future of refugee and Migration Policy*, elaborated by the Society for Internacional Development (SID- Netherlands Chapter).

<sup>263</sup> UNCHR-ACNUR, *Los refugiados en cifras*, Ginebra, 2004.

<sup>264</sup> Article 1 (A2) of the 1951 Convention.

<sup>265</sup> In december 2003, 145 countries had ratified the Convention.

In spite of its virtues this definition needed to be readjusted before situations of massive refuge in which the individual determination of the condition of refugee is almost impossible. Thus in Africa an "extended definition" of refugee was elaborated<sup>266</sup>, by means of a sort of "collective determination" and by which each protected person happens to be *prima facie* sheltered. The African Convention states that "*the term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality*".

After the tragic experience of the military dictatorships in the Southern Cone and the cases of massive refuge in Central America generated during '70s and '80s, equal initiatives were made in Latin America. Hence, another "enlarged definition" of refugee was approved in November 1984 in the Colloquium of Cartagena de Indias, Colombia<sup>267</sup>. It was complementary to the one of the Geneva Convention of 1951 with elements that resulted from the Latin American experience. Thus it recommended to include among refugees "*persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order*".

Advances have been made regarding the African definition, specially when introducing the terms "internal conflicts" and "massive violation of the human rights", causal proposals regarding the persecution caused by the military regimes in South America during the '70s and '80s. Although the Colloquium of Cartagena was not binding, the definition acquired autonomy and has been adopted in the normative, jurisprudence and practice of most of the countries of the Continent.

The line of "collective determination" pointed out before is kept, although nothing withholds from applying it to solve individual cases. In fact, several Latin American countries determine the internal status of a refugee by the way in which the Cartagena definition establishes it.

<sup>266</sup> *Convention Governing the Specific Aspects of Refugee Problems in Africa*, done in the city of Addis Ababa (Ethiopia) on September 10, 1969.

<sup>267</sup> See *La protección internacional de los refugiados en América Central, México y Panamá. Memorias del Coloquio de Cartagena de Indias*, Bogotá, Colombia, 1986.

## Argentina

In 1965, Argentina ratified the 1951 Geneva Convention, although maintaining the geographic reserve, that only allowed to understand as refugees people arriving from Europe. This limitation is explained by the existence of the Inter-American Conventions of Asylum that, according to what was understood then, already covered the cases regarding refugees in Latin America<sup>268</sup>. UNHCR transferred to Buenos Aires the Office priority established in Bogota since 1952. The activity of the Office for several years was almost exclusively addressed to the attention of the European refugees, arrived at the continent after the World War II. The few cases of non-European refugees were solved on a case-by-case criterion or under the inter-American regime of asylum.

The situation in Latin America changed radically with the *coup d'état* in Chile and Argentina's military dictatorship of 1976, for the political situation caused the exit of Chileans and other Latin American people who were living there. This process of democratic breakdown and dictatorial governments extended to all the countries of the Southern Cone during the seventies, so that new refugees started to be added to the Chileans. As it was already stated, the countries of the Southern Cone had ratified the Convention by applying the geographic restrictive clause. Only two countries had adhered to the Convention without reserves: Uruguay and Chile. As a result of it, during the period of the military dictatorships in Argentina, Bolivia, Brazil and Paraguay, the work with Latin Americans had to be done under the fragile figure of refugees "under mandate" (that is in agreement with the Statute of Creation of UNHCR Office) and not under the Convention. This created an additional difficulty since the military governments were not forced to refuge non-European citizens. With these limitations hence was the humanitarian crisis of the '70 and '80 handled.

When democracy was recovered, the respective governments recognized the necessity of a total ratification, so that during the following years the "geographic reserve" was left aside and the Convention of 1951 is currently in use

<sup>268</sup> In fact, the coexistence of an inter-American regime of asylum and the internacional system of refuge has caused many difficulties for the protection of the refugees in the continent. We cannot deepen now in this matter and, for the sole effect of this work, we consider both terms almost as synonyms, pointing out, when required, the institute to which we are referring to.

in all the countries of the Southern Cone. At present, a suitable internal law regulating the granting of refuge for those requesting asylum is needed.

As it was already stated, Argentina has ratified the Convention of 1951 (as well as the Optional Protocol of 1967) and left aside the geographic reserve that previously prevailed. In 1985, the National Decree 464/85 was sanctioned and the Committee of Eligibility for Refugees was created (CEPARE). This Committee is integrated by three members of the Direction of Migrations – that provides location whilst presiding it – and by a member of the Ministry of Foreign Affairs. UNHCR is invited to participate in their deliberations with voice but without vote. Decree 464/85 has been a valuable instrument to solve the difficulties created for the protection of refugees and to modernize the legal context. Nevertheless, it is no longer an appropriate instrument, generating weaknesses in the system.

UNHCR has proposed the governments of the Southern Cone a model of legal criteria adapted to the international norms on the matter. Only Brazil and Paraguay have sanctioned updated internal laws for its application. However, a minimum and insufficient set of dispositions to face new emergencies exist in Argentina, Bolivia, Chile and Uruguay. There have been at least two projects of law in Argentina presented for Parliament approval that did not reach success in their purposes, and there is currently another project awaiting to be decided upon. At this time of relative calm, the void remains unnoticed by the public opinion, although not by those asking for asylum. Moreover, this legislative void is to present serious problems if a new emergency of refuge takes place.

The practice of eligibility adopted by CEPARE has taken into account not only the obligations that were related to the international instruments on the matter, but also other linked documents of protection of human rights to which our country has subscribed. The decisions on concession of refuge have welcomed the modern criteria of eligibility hence solving – in a positive sense – very questionable subjects, for example persecutions to conscientious objectors, or due to reasons related to gender or to non-State agents when their original State was not in condition of adequately protecting its citizens. In such a way and although it is not incorporated to our country's legislation, the definition of refugee of the Cartagena Colloquium was applied. In that sense, hence demands of asylum have been solved positively when claimed by nationals, continentals and extra continental people who are victims of internal conflicts and oppressive regimes.

CEPARE has – since it's opening to the moment in which this report was written – received 8,740 requests of refuge, whilst it has recognized the status of refugee to 2,061 people and denied it to 3,503<sup>269</sup>. There are currently 1,929 cases that remain without decision, although a part of them are not within the scope of CEPARE<sup>270</sup>; 1,247 requests are under process and awaiting for resolution. Around 40% of the cases are, in other words, without definition, due to difficulties internal or external to the Committee of Eligibility. Most of the cases without solution correspond to appeals for negative decisions of the CEPARE that the petitioners presented before the Ministry of Interior<sup>271</sup>. This aspect is one of the weaknesses of the system: each time the appeals enter in new administrative levels, they become excessively delayed (delays of two to three years have been registered).

Although the time of the proceeding in CEPARE has improved sensibly from mid 2002<sup>272</sup>, the percentage of effectiveness and rapidity is still discouraging, particularly in the cases of appeal. Since 2002, the average time for resolution on behalf of CEPARE oscillates between 6 and 9 months, although pending requests of over three years have been acknowledged (previous to 2002 or in appeal). It is not reasonable to maintain the asylum requesters in such a precarious situation and we understand that the State, through CEPARE, is to urgently deliver immediate solutions to these delays. Considering the extreme vulnerability and uncertainty outlived by the applicants of refuge, the new legislation of refuge must contemplate the fixation of maximum terms to decide on requests. Although we recognize that it is a controversial question, we consider that when the delay in the decision exceeds a prudential time, the petitioner should automatically be recognized as refugee.

<sup>269</sup> The of recognition rate oscillates in a 40%.

<sup>270</sup> An important number of paralyzed cases belong to Peruvian citizens that, even after the reestablishment of democracy within their country, deny to return alleging the persistence of fears of persecution. Nevertheless, these cases should have been solved a long time ago and the absence of resolution cannot be justified. Furthermore, it includes people that have not followed the tramit that have not seat in the second audience or have not renewed the precarious residencies given by the National Direction of Migrations.

<sup>271</sup> In the case of appealing, the Ministry of Interior solves after a resolution of the Secretariat for Human Rights of the Ministry of Justice and Human Rights.

<sup>272</sup> According to UNHCR this amelioration is due to the modification in the internal system of eligibility that has markedly accelerated since 2002. This date coincides with the technical assistance and the provision of working material (computers, input, maintenance and personnel training) that was specially financed by the High Commissioner.

The extraordinary importance the organism that determines the condition of refugee has, turns the making of a Secretariat, dependant from any Ministry, a desirable task. It is also recommendable that the person presiding it, should be selected in open competition.

It is also evident that the qualification and efficiency in the service must not only be limited CEPARE but by the administrative team that participates in the appeal (Ministry of Interior and Ministry of Justice). Our impression is that personnel trained in the efficient and rapid solving of these questions does not exist. The constant qualification that we request should necessarily be extended to the external organs of CEPARE.

Finally, a factor that worries us is the absence of any type of training or qualification of the borderlines' personnel in the adoption of appropriate resolutions on asylum requests. The permanent training that we propose must include then the Police officers and Gendarmerie employees that operate in the bordering zones.

In addition to the legal precariousness that the petitioners of refuge are put under, the absence of public policies to facilitate State aids to those who are forced to be integrated to the Argentine society is also noticed. The economic aid that UNHCR delivers through its agencies is minimum and comprehends a period of six months, only renewable in extreme cases of defenselessness. But neither the National State nor the Municipal Governments (particularly the Government of the City of Buenos Aires, where most of the refugees and petitioners of asylum inhabit) have aid plans to cover basic necessities such as housing, social micro-credits or benefits. It is certain that the plans of social attendance do not discriminate refugees but they demand foreigners to have a residence of at least two years and an Argentine ID, both requirements are of extremely difficult fulfillment. As a consequence, we have acknowledged that refugees are not recognized by the State as a beneficiaries of any kind of State aid such as: family allowances, plans for *Jefas* and *Jefes de Hogar* or facilities to acquire or occupy houses.

Asylum petitioners' – with provisional documents – access to public health and education is difficult. Constant complaints of difficulties that result from the authorities disregard to the international commitments assumed by the country are received, whilst others regarding limitations to elementary rights as the one of free circulation around the country, access

to universities<sup>273</sup> or receiving complex medical treatments have also been recorded. Therefore, our proposal of sanctioning exception dispositions for the contemplation of the situations of refugees referred to social attendance and education is based on what was depicted above. Training of professionals and administrative personnel, that due to their duties interact with refugees or asylum petitioners, is also suggested.

Underlined deficiencies regarding social benefits in health care assistance should be definitely substantiated when refuge is provided. It is hence convenient to consider – together with the recognition – the handing of a permanent visa to the petitioner and his direct family.

As it was already stated, the legislative coordination of the region demands that Argentina updates the international legislation regarding asylum. These dispositions must incorporate a broad definition of refugee according to the one approved by the Colloquium of Cartagena de Indias of 1984. The Committee of Eligibility (CEPARE) must maintain a varied administrative representation (in the most essential areas: Interior, Justice, Foreign Affairs) to avoid arbitrary or founded exclusively on security criteria decisions. In reference to this, we would like to underline that refuge is above all a humanitarian institution and that, although bound to security questions, it cannot be exclusively seen under that perspective. In addition, the regulation of an adequate prevention for the attendance of emergencies or massive refuge situations is required. The country's maintenance of a minimum coordination with the neighboring countries is convenient. A common legislative update in agreement to the international organisms is an essential part of that process<sup>274</sup>.

The last problem that needs a suitable legislative disposition is the existence of several cases of asylum requests that are simultaneous to orders of extradition from the original countries. As it is known, refuge does not protect ordinary delinquents, but those persecuted due to their political ideas, so that both situations can collide. The priority of the refuge over extradition is clear: according to the Argentine law a person that has been

<sup>273</sup> What is referred to the refugees is also applicable for applying to Universities. There are no discriminatory norms but national IDs, that refugees do not possess, are requested, hence becoming unable to enrol.

<sup>274</sup> On the content of the law take into account the dispositions agreed on by the Latin American states and experts in the Mexico 2004 meeting sponsored by UNHCR and known as "Plan of Action for the International Protection of Refugees in Latin America".



declared refugee cannot be extradited. Nevertheless, when these delicate situations occur, the same case is simultaneously treated, on the one hand, by CEPARE due to the refuge request and, on the other, by a Judge instructed by the extradition order. Experience has shown that this situation is “frozen”, since both CEPARE and the instructed Judge await for the decision of the other before stating their own position. We have known of several cases that remained without resolution indefinitely. The question can be remedied in a simple way: by the approval of a legal reform establishing which is the organ that must decide first.

*Please refer to proposals N 17, 27, 28, 29, 126, 130, 132, 133, 134, 135, 159, 182, 183, 184, 188 and 223.*

## SPECIAL REQUIREMENTS<sup>275</sup>

Special requirements are understood within this chapter as: every change, modification and/or transformation of technological, occupational, social, architectonic, communication elements or any other type of adaptation required for allowing people handicapped, deffitient, minusvalid or with a difference in the exercise of any of their capacities, to perform with the best efficiency level.

The necessity of a “special requirement” is in some cases product of consequences brought about by a disease of the demanding person but in many others results of the normalization condition of certain activities that do not contemplate the total population.

The existence of a “special requirement” constitutes an obligation of the social whole (as a condition for its “collective realization”, and hence of the State and not a specific problem of the people that demand them. Consequences on the implementation of these adaptations are necessary and enrich society for it brings along work, communication, mobility, expression, etc. that offers possibilities of those that require the use the “special requirement”.

It is in the intention of making an ordered analysis of the diverse “special

<sup>275</sup> The following documents have been taken into account for the analysis: Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities; Standard Parametres on Equal Opportunities for People with Disabilities; Preliminar Report on the Situation of People with Disabilities in Argentina, elaborated by the Committee for the Evaluation on the Follow-up of the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities; recent INDEC reports on the presence and caracteristis of population with disabilities according to data recollected during the last census; Conclusions of the Seminar: “European Action Plan for People with Disabilities” (20/12/2004); as well as existing literature on the issue.

requirements”, their implementation in the country, the fulfillment of the existing legislation, that we have divided the chapter in the following items:

- Knowledge of the existing requirements;
- Mobility and transport;
- Communication and expression;
- Labor;
- Health and rehabilitation;
- Assistance;
- Legislation.

### **Knowledge of the existent requirements**

Argentina did not count, until the 2001 national census, with any information regarding the amount of people with special requirements nor about their social, economical characteristics or their population distribution. There was no information about what this people required. This has stated changing with the inclusion of a question on disability in that census and a study on a sample of 70.000 homes during 2002 and 2003.

According to these works, population with special requirements in Argentina was 7,1% of the total. In absolute numbers this means more than 2 million people. Prevalence of people with special requirements is higher among women than men and much higher among the elder adults than the others.

INDEC’s studies show that people with mobility problems represent 39,5% of the total population with special requirements, 22% are visually handicapped, 18% are with listening problems and 15,1% mentally handicapped. According to the data, almost 40% of the population with special requirements is without private health care, which aggravates their situation. Numerous denounces about the unfulfillment of health care (and very specially the private care agencies) on the assistance obligations to the population with special requirements in what is related to their rehabilitation as well as to what refers to diverse treatments and needs were received.

Even when it is only this year that we have started having reliable data on this population this does not forbid the development of required adaptations or of the needed accompaniment. This is due to the fact that for many of the required actions it was not needed to know the quantity of the included population nor their characteristics.

Knowing their statistical situation is important in the advancement of one of the most important consequences of disability phenomena: the tendency of “invisibilising” it for society as a whole and for the person with special requirements. This first data allows us to underline the importance of the problematic and the urgency of initiating or reinforcing actions tending to prevent, rehabilitate and reinsert these populations.

The lack of conditions lead this population to intend to deny their own requirements and to participate in social life by intending to suit – with the implied difficulties – the conditions of “normality” that are markedly disadvantageous to them. These conditions include for example: walking in the public streets without the required implements; circulating with problems in streets or in buildings without the proper installations (and with the risks this brings to personal integrity). Moreover this lack of special contexts brings about social isolation, disappearance from the public sphere and seclusion within the family and home scopes (that materially and symbolically invisibilises their existence).

### **Mobility and transport**

An enormous disadjustment is detected between the legislation and the fulfillment of what is referred to as an existent architectonic barrier in buildings and public spaces of diverse cities of the country.

Denounces on the lack of fulfillment of the enterprises regarding circulation and adaptations to the law is common to many of the country’s cities. The lack of sanctioning on behalf of the control authorities is noticeable. This type of actions on behalf of enterprises are already institutionalized as can be noted in those denounces presented at INADI that have expressed the seriousness of the situation.

Several denounces regarding the unfulfilment of the gratuity of means of long distance transport tickets to people with special requirements has been repeatedly noticed during the interviews done by this Plan. Many enterprises mistreat the requiring people by not respecting bookings, changing journeys, and subordinating normative to room availability until last minute. Although the necessity for booking tickets with certain anticipation in peak dates can be understood, this does not justify postponings or annulment of tickets in benefit of those that pay for them neither mistreatment to requiring people justifiable. It is evident that these denounces are part of the general problem of the unexistence or the inadequate func-

tioning of the pertinent control organs, specially the secretary of transportation in its diverse political managements.

### **Communication and expression**

Our country is noted for its lack of progress regarding the understanding of the problematic of deaf people. The bilingual character of the deaf community and the legitimacy of their language (Argentinean signal language) is not yet accepted in many specialized places (or addressed to handicapped people) and hence the required adaptations – subtitling and interpreters – are not present in the public places. This lack of recognition is also present in the legal apparatus of the country considering the deaf as “incapable” and unable for the administration of goods or the possibility of getting married for not considering their language a medium of expression.

The reversion of the situation and the creation of the necessary adaptations is urgent, fundamentally by recognizing the Argentinean signal language as the natural language of the Argentinean deaf population and therefore recognizing it as a bilingual community with all the possibilities and rights of other populations that count with a language of their own.

On the other hand, there is no official policy supporting the functioning and enlargement of the talking libraries nor the Braille transcription of literature and scientific bibliography, tasks that are then to be developed by civil society organizations. The organization of this tasks and the State apparatus’ assumption of its responsibility of making accesible a larger number of material to the population with special requirements is fundamental.

### **Labor**

Employment situation of the population with this requirements suffers in particular of society’s unemployment problem. If finding a job is a hard and complex task, personal difficulties – that tend to be obstacles for getting a job – are added to it in the case of people with special requirements.

This requires of a series of simultaneous actions: on the one hand, professional training and re-training of people with special requirements, through training programs and the delivery of the necessary technology (in many occasions computing elements, sometimes an adaptation software and in others the presence of interpreters or communication facilitators) for performing their role on the same base that people that do not need

that adaptation do it. On the other hand, the creation of specific areas of “protected employment” (that tends to give very good results) is needed. Multiplying these possibilities of protected employment, generating farming workshops, cooperatives and capacitating people that are able of being inserted into the formal labor market are complementary tasks that can cooperate in the diminution of the high rates of unemployment amongst population with special requirements.

### **Education**

Specificities of each group of people with special requirements should be evaluated at the time of designing educative policies. Not doing so brings about the risk of imposing standardized solutions to situations that count with their peculiarities.

In the case of deaf people, integration is not recommendable before accomplishing bilingual skills which means that the teaching of contents by signal language first, for a later incorporation of the deaf population into the classrooms with non-deaf students. The learning of basic elements of the signal language is not only suggested for some of the teachers (specially the integrative one) but also for some of the students with the aim of simplifying communication.

Policies of integration are much more recommendable for people with visual or mental disabilities, always in presence of the integrative teacher whose mission is to generate the necessary adaptations for facilitating education and socialization.

In the case of people with mobility disabilities, the main problem is school buildings’ adaptation. This is to be taken into account not only in the schools in which people with mobility disabilities attend but also in the future design of all school building given the fact that a better accessibility is in favor of the total population and diminishes the possibility of accidents.

Lastly, teachers of the national, provincial and municipal educative nets do not count with the specific training in special requirements nor know how to face integration of these children. Since special education is not contemplated in the curricular design of teaching training of almost any level of the educational structure the technological adaptations and the necessary curricular transformations are not taken into account.

## **Health and rehabilitation**

The main problem lies on the lack of centralized prevention and rehabilitation policies. State apparatus campaigns on the subject are sporadic and do not usually respond to a State policy but to needs of political campaigns nature. On the other hand, existing rehabilitation centers are rare and incapable of attending all the requiring population and are not distributed uniformly through the national territory neither in relation to the location of the population.

Numerous and very serious cases of unfulfillment of law N° 24.901 – that obliges social security and prepaid medicine services to give coverage to treatment to people with special requirements – have been detected during the held interviews. This is a result of the lack of State control and the lack of application of the punishments to social security companies or enterprises that do not fulfill legislation.

There is no policy, on the other hand, addressed to training health professionals (doctors, specialists, nurses) in the prevention, peculiarities and specificity of treatment of population with special requirements.

## **Social assistance**

Problems are similar in the scope of special requirements to those that have been already revised when analyzing poverty and unemployment situation and unsatisfied basic needs. Due to the lack of preparation or the bad medical attention, incidence of different disabilities is higher then in sectors of new poverty and structural poverty than in the rest of society. Poverty conditions also oblige the person with special requirements to isolation due to the lack of the necessary resources to access to autonomization-required adaptations.

A large number of denounces have, on the other hand, been done on the arbitrary assignation of pensions of invalidity that are to be a universal right for people with special requirements. The amount of these pensions are usually beneath the basic needs of people with disabilities.

## **Legislation**

Argentina has advanced considerably in the ratification of covenants and in the sanctioning of national and provincial laws related to population with special requirements. Nevertheless, the greatest problem detected in

this field lies in the widespread unfulfilment of the normative and in the non-existence or bad functioning of the organs in charge of its control as well as in the lack of budgetary prevision for its fulfillment.

That is why this field requires the creation, broadening or modification of the control organs regarding the subject as well as the fulfillment of legislation on special requirements in the accountability of every public entity and franchised public service as well as in the private education and health entities.

*Please refer to proposals N 17, 35, 36, 40, 59, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 174, 175, 176, 177, 223, 227 and 241.*



## POLITICAL-IDEOLOGICAL\*

There are two motives that will be analyzed and that can clearly summarise discrimination in the political-ideological field: political clientelism and prebendary assistentialism.

*Political clientelism* has as a characteristic the political parties' construction logic. According to Antonio Gramsci, "opinion changes that occur among the masses under pressure of determinant economic forces are interpreted by the parties, which first split into tendencies and then into a multiplicity of new organic parties. Through this process of de-articulation, neo-association, and fusion of homogeneous entities, a more profound and intimate process of decomposition of democratic society is revealed. This leads to a definitive alignment of conflicting classes, for preservation or for conquest of the State power and the power of the productive apparatus"<sup>276</sup>.

The need to achieve political adhesion and favourable resolutions in primary elections (of a non-compulsory nature) generates corruption situations, benefiting those that belong to a certain group or faction on expenses of those that belong to another one or to none.

In general terms, in Argentina, people capabilities or independence are not taken into account when distributing public employment. At the time of mandate renovations, it is very usual not only to replace the political posts of a certain area (being it national, provincial or municipal) but also to replace the non-political ones, as well as those in the lower hierarchies of the public administration. In the National Administration, out of a total of 27,571 of permanent employees and 13,511 hired by contract employees (corresponding to 66 of the 113 offices), 8,331 selection processes were started between January 1993 and June 2003. Among them, the open com-

\* We thank Brenda Vukovic for her collaboration in this chapter.

<sup>276</sup> Gramsci A., *Pensamiento Político (El Partido)*, Ediciones Roca, México, 1977, p. 63.

petitions represented only a 38.9% (1,559 simple posts and 1,677 executive posts). In addition, it should be noted that 65% of the competitions were promoted by the Ministry of Economy and Production and by the Presidency, whereas none of the remaining offices represented more than 10%<sup>277</sup>.

In this way, political apparatus' power building logic, derives into a clear political-ideologic discrimination. As example, during our research, complaints and denounces referred to political discrimination based on public agenda management by majoritarian sectors were received but all of them were introduced as gender or impediments for minorities issues.

In this sense, Pablo José Torres considers that clientelism *"is presented as an exchange relationship between two people but is, in fact, a domination relation, in which certain individuals (bosses) provide particular services, goods, or favours to others (clients) that pay them back with fidelity, assistance, personal services, prestige, or political support. Between them (bosses and clients) mediators can be found, which are those that develop the links between the services, goods or favours provided by the boss and the fidelity, assistance, personal services, prestige or political support provided by the client. Political clientelism implies two aspects: what specifically is being interchanged, and the subjective (equally or more important than the interchange), considered as a set of beliefs, presumptions, abilities, repertoires, and habits that go along with the interchanges (cliental habitus)"*<sup>278</sup>.

In addition, the basic structure of *prebendary assistentialism* turns out perverse for it underpins the constituted power –allowing it to legalize itself by deepening its privileges instead of providing solutions for structural problems– and it establishes a system of "assistance" that allows the dismantling of the social dialectics under selective and specific aids that are neither retributive nor productive.

The exchange of "favours", (goods and services) for political support and votes has been deepening with the raise of unemployment and material scarcity that develops jointly with process of adjustment and economic

<sup>277</sup> Source: Subsecretaría de la Gestión Pública - Oficina Nacional De Empleo Público, *Los Procesos de Selección de Personal en el Sistema Nacional de la Profesión Administrativa*, Julio 2003. Véase también *Registro Nacional del Personal Contratado* (Enero 2005) y *Boletín Estadístico del Personal del Sistema Nacional de la Profesión Administrativa (SINAPA)* (Diciembre 2003).

<sup>278</sup> Torres P. J., *Clientelismo Político y Ayuda Social* in <http://www.argentinaobs.org>.

re-structuration. Assistance policies for underprivileged sectors – in opposition to the implementation of public policies oriented to structural improvements of their living conditions – has generally been joined by prebendary criterions and cliental relations. *“Food distribution or temporary employment assignment constitute the form of getting electoral adhesions, changing the nature of democratic mechanisms of participation”*<sup>279</sup>. These assistance plans are hence subdued to discriminatory criterions in their distribution due to the fact that, since they are not universal, they allow discretionary practices on behalf of officers at the moment of selecting beneficiaries based on the displayed fidelity or degree of discipline.

The action capability of the excluded groups in a certain socio-economic context tends to be neutralised by the effect of the assistential policies. This type of policy, offering short-term responses for the most needed ones, obstacles the structuration of legitimate social demands and the consequent formulation of alternative policies that could give effective response to their needs.

In the majority of the cases, assistance beneficiaries not only accept *benefits* as precarious solutions for their exclusion, but also take on the implicit norms of these relations of mutual help, loyalty and personal solidarity. This type of loyalty is not owed to the national leader but to the “boss” (*puntero*). From the point of view of the beneficiaries, the cases of changes of loyalties within the party’s internal fractions are mainly related to the maximization in the gaining (State resources) rather than to the adopted public policies<sup>280</sup>.

Assistentialist policies erode the natural bond established between people that share same material living conditions, strengthening individualism and “personal salvation”; instead, they deteriorate the possibility of deepening solidarity bonds within a community or a certain social group. The personalization and verticality inherent to these relations, added to the consequent particularistic atomisation, erode the generation of collective actions.

The types of intra-group relations that are usually established imply the “other” to be seen with indifference or, even worse, as an obstacle for “per-

<sup>279</sup> Jozami E., *Políticas de Inclusión Social a partir de las Ciudades y el Fortalecimiento de las Asociaciones y Redes*, Buenos Aires, mimeo, 2003.

<sup>280</sup> Auyero J., *Clientelismo Político. Las Caras Ocultas*, CI, Buenos Aires, 2004, p. 32.

sonal salvation". In this sense, where elements of identity or social solidarity could have germinated mechanisms that lead to exclusion and discrimination between pares arise: differentiation from the "other" is pursued.

The reaction of an important part of society in face of protest groups shows how, even between those that suffer unemployment and poverty, differentiation imposes (in the forms of pejorative comments and "condemnations" to these actions) over a recognition of the shared exclusion<sup>281</sup>.

In a context of socio-economic crisis, the unsatisfied basic needs of a great sector of society derive in demands to the State and its institutions. In a large number of cases, assistentialism is the sole response that political power gives to social requests, without proposing real changes in the political, economic and power structure of the country and reinforcing the *status quo* through neutralization and dismantling of the potentially disestablishing the social dialectic. In this way, political power exercises a strong social control over the most vulnerable sectors, nurturing with the hegemonic system's structural violence<sup>282</sup>.

Corruption operates in both cases – political clientelism and prebendary assistentialism – in such a way that ends up eroding the government system in all its levels, the system of accumulation of power while pervading the electoral system.

*"Great politics includes issues related to the functioning of new States, the struggle for the destruction, defence, conservation of certain economic-social organic structures. Small politics includes partial and everyday issues that are set in the interior of an already set structure, due to the pre-eminent struggles amongst diverse factions of a same politic class. Therefore, a great politics is the intent of excluding great politics from the internal scope of State life and to reduce every thing to small politics"*<sup>283</sup>.

Political corruption cannot be understood in depth without considering the economic power that at national, provincial, municipal level finances actions of this nature, in exchange for the possibility of influenc-

<sup>281</sup> In Mendoza, it is usual to call "*fachilero*" (from shanty town) in order to insult those new-comers to Provincial Housing Institute' towns, even when sharing similar socio-economic backgrounds. Interviews in Mendoza, 2004.

<sup>282</sup> Auyero J., *op. cit.*, p. 16.

<sup>283</sup> Gramsci A., *Notas sobre Maquiavelo, sobre la política y sobre el Estado moderno*, Nueva Visión, Buenos Aires, 1984, p. 169.

ing in the decision making process and in the implementation of public policies. Quoting Javier Auyero, we can assure political clientelism and prebendary assistentialism are to be eradicated for fundamental rights to be fulfilled, independently from their integration in political nets. Therefore the struggle against *exchange of favours for votes* does not have to be a struggle against the beneficiaries, not even against the "bosses", but a struggle for the complete implementation of human rights<sup>284</sup>.

*Proposals N 17 and 205.*

<sup>284</sup> Auyero J., *op. cit.*, p. 91.

# RELIGION

## ■ Religious conformation of Argentina

### Conversion to Catholicism

The Spanish and Portuguese conquest of the Americas introduced the Roman Catholic religion into the continent. A well-structured Church and intimately related to the monarchies of the conquering countries arrived at the continent with the mission of converting the Americans to Catholicism. The Church's enshrined notion of faith held a will of universality and integrity that trampled the indigenous people's spirituality. Di Stefano and Zanatta state that, "*the Spaniards and Portuguese do not simply bring the announcement of a religious message but a complete, complex theology, which excluded all other traditions that were not adaptable to its dogmatic corpus*"<sup>285</sup>.

The confrontation between the Church and the indigenous spiritualism has been both rich and controversial. Some of the Church rites were probably familiar to the Americans and thus facilitated – at least apparently – the conversion of the natives<sup>286</sup>. Baptism was the expression of conversion: once baptized, the natives became members of the Catholic community and part of Christianity. Throughout the centuries, the Latin American colonial society developed as a compact religious block, excluding all other religious practices.

Argentina and its neighboring countries were not an exception to this historical trend. Only after the beginning of the XIX century the presence of other religious confessions is recognized, being the concept of religious freedom more or less strange to the colonial society.

<sup>285</sup> Di Stefano R. and Zanatta I. *Historia de la Iglesia Argentina*, Grijalbo Mondadori, Buenos Aires, 2000 pag 22.

<sup>286</sup> See, Buntig A., *El catolicismo popular en Argentina*

After the May Revolution<sup>287</sup> the relationship between Creole governments and the clergy was not a coherent policy but rather the outcome of the political, military and financial urgencies<sup>288</sup>. Even though some conflicts with the high hierarchy took place – mainly with Hispanic bishops in the country (Lué, Orellana and Videla del Pinno) – not many problems emerged with other sectors of the Church, particularly the Creoles: many priests joined the independence cause, and even participated in governments and congresses.

A change in the old regime system started to be foreseen when the Assembly of 1813 decided to dismantle the Lima's "Santo Oficio" Court<sup>289</sup>. A principle of religious freedom was established for the first time, stating that "*no foreigner or his family and servitude (...) will be bothered due to religious matters as long as the public order is respected, and they will be allowed to worship God within their homes according to their customs*".

In 1821 and 1822, the Government of the Province of Buenos Aires disposed the confiscation of ecclesiastical lands and goods. This measure brought about serious material damage to the Church, even though the national government decided to compensate the losses<sup>290</sup>. This process is still today alleged as the reason explaining why the Argentinean State provides for the Church<sup>291</sup>. In the same decade (1825), the Argentine Government subscribed with the English the "Treaty of Friendship, Commerce and Navigation" by means of which the British Crown recognized the Argen-

<sup>287</sup> [TN. The May Revolution (*Revolución de Mayo*) refers to the 1810 episodes that led to the 1816 Declaration of Independence.]

<sup>288</sup> Di Stefano and Zanatta, *op. cit.*, p. 201.

<sup>289</sup> [TN. The Lima's "Santo Oficio" Court (*Tribunal del Santo Oficio de Lima*) was the most important Christian court within the Viceroyalty of the River Plate (*Virreinato del Río de la Plata*).]

<sup>290</sup> Cayetano Bruno details the affected goods. In Buenos Aires City they included, amongst others, the current land in which the City hall is located, the blocks of San Miguel, San Nicolas, San Ignacio (called Manzana de Las Luces), San Francisco, Santo Domingo, La Merced and San Telmo, former Mint, lands in Recoleta, elder people asylum, Mercedes asylum, Rawson hospital. It also included many properties in the province. See Bruno C. *Historia de la Iglesia en Argentina*, Buenos Aires, Don Bosco, 1966-1976, pp. 100 and others.

<sup>291</sup> Project proposed in 2005 (Program 17). Was also a response to the government before the objection enounced by the Special Rapporteur on religious and beliefs freedoms (*Report of the Special Rapporteur on religious freedom and freedom of beliefs*: paragraph 57).

tinean State. Among other clauses, British citizens were granted (and by reciprocity, to the Argentineans who reside in British Crown territories) the right to “not to be troubled, persecuted nor bothered for religious reasons, they will furthermore enjoy of a perfect freedom of conscience celebrating the divine practice within their own houses and or particular churches and chapels”<sup>292</sup>. The new Argentinean situation causes the arrival to the country of foreigners that professed other religions, as it will be seen separately in the comments on Judaism, Protestantism and Islamism.

### Church and State. Religious Freedom<sup>293</sup>

The national organization (from the 1852) and the sanction of the Constitution of 1853 brought about a decisive change regarding religious freedom and the religious system in the country that remained almost intact until the constitutional reform of 1994.

It must be considered that, at mid XIX century, religious freedom was a claim already accepted by the European and American legislation. Article 10 of the Declaration of the Rights of the Men and the Citizen had stated<sup>294</sup> it and the First Amendment of the North American Constitution had established a similar principle<sup>295</sup>. On the other hand, the country was prepared to receive immigrants from foreign countries and freedom of religion became, almost, a condition in order to receive them. This aspect was

<sup>292</sup> Article 12 of the Treaty.

<sup>293</sup> The following texts have been of reference for the making of this section: Badeni G., *Instituciones de Derecho Constitucional*, Ad-hoc, Buenos Aires, 1997; Bidart Campos G.J., *Tratado Elemental de Derecho Constitucional Argentino*, EDIAR, Buenos Aires, 1992; Bruno C., *op.cit.*; Canclini A., *La Libertad de Cultos*, Asociación Bautista de Publicaciones, Buenos Aires, 1986; Di Stéfano y Zanatta, *op.cit.*; Ekmedjian M.A., *Tratado de Derecho Constitucional*, Depalma, Buenos Aires, 1993; Estrada J.M., *Derecho Constitucional*, Editorial Cía. Sudamericana de Billetes de Banco, Buenos Aires, 1895; Gentile J.H., “¿Por qué una ley de libertad religiosa?” en *La Libertad religiosa en la Argentina*, CALIR, Buenos Aires, 2003; Quiroga Lavié H., Benedetti M.A. y Cenicacelaya M., *Derecho Constitucional Argentino*, Edit. Rubinzal Culzoni, Buenos Aires, 2002; Llamosas E., “Interpretación e incorporación de los tratados de integración a la Constitución Nacional” en una obra mayor, VVAA, *Jerarquía Constitucional de los Tratados Internacionales*, Astrea, Buenos Aires, 1996; Vanossi J.R., *Teoría Constitucional*, Depalma, Buenos Aires, 2000; Zarini H., *Derecho Constitucional*, Astrea, Buenos Aires, 1991.

<sup>294</sup> “Nobody is to be bothered du to personal opinions, even religious ones, as long as their manifestation do not damage law founded public order”.

<sup>295</sup> “Congress shall not dictate a law on the oficialization of certain religion nor forbidin its free practices”.



underlined by Juan Maria Gutiérrez when asking, during a discussion on religious freedom, how *“could a foreigner be invited to come to our land while being denied of the right to worship his God as he did it in his home land”*<sup>296</sup>.

In fact, in 1853 two debates took place at the same time: one referred to the relationship between the Church and State and the other dealt with the debate on religious freedom. It was Alberdi himself who unified the subject when proposing the text: *“the Confederation adopts and maintains the Catholic religion and guarantees the freedom of all the others”*. Several proposals (Pedro de Angelis, Juan Manuel Perez, Pedro Zenteno, Manuel Leiva) maintained, however, that the Roman Catholic Apostolic had to be declared State religion while –with variants– were against the freedom of cults or for its restriction. Most of constitutionals (including a the priest Lavaysse Benjamín and the President of the Convention and a well-known Catholic layman, Facundo de Zuviría) were nevertheless inclined to a yet more limited resolution than Alberdi’s hence voting for the present text of article 2°: *“the federal government maintains the Roman Catholic Apostolic religion”*. Separately, in article 14 *“to profess their cult freely”* was added as a right of the inhabitants of the nation. In addition, in article 20, it was set that *“the foreigners enjoy all the civil rights of the citizen in the territory of the Nation (...) to exert their cult freely”*.

Bidart Campos<sup>297</sup> synthesizes this debate affirming that the conventionalists had to decide among three alternatives: two of them divergent (“sacred”, “lay”) and one intermediate, “secular”. The last one finally prevailed and hence the State recognizes the reality of a religious power and gives it a status *“without an acknowledgement of the Catholic Church as an official church”*. The analysis ends stating that the adopted regime *means “freedom of cults, without equality of cults”*. Ekmedjian agrees with this approach<sup>298</sup> and states that *“... an intermediate position is adopted according to which the Catholic Church is not given the role of official religion of the State but occupies a status of privilege (...) preferred to the other cults without implying a limit to religious freedom”*.

However, if the Church is not a religion of State, what does the expression “economically supports the Roman Catholic Apostolic religion” (of article 2° of the National Constitution) mean? Most of the constitutionalists

<sup>296</sup> Gentile, *op. cit.*, p. 60.

<sup>297</sup> Bidart Campos, *op. cit.*, p. 181.

<sup>298</sup> Ekmedjian, *op. cit.*, T I, p. 191.

and some sentences of the Supreme Court affirm that this disposition simply means that the State “maintains that cult economically”<sup>299</sup>. Bidart Campos<sup>300</sup> clarifies this interpretation when affirming that article 2 of the National Constitution not only justifies the economic contribution but mainly implies the moral union between the State and the Church, as well as the recognition of which the Church is a legal entity of public right. Most of the authors, jurists or not, on this matter, mention the opinion of the convention member Juan F. Seguí: *“the Commission of Constitutional matters has solely observed the cults and has noticed that the one that the greatest numbers of Argentineans practice is the Roman Catholic Apostolic and therefore has imposed to the Federal Government the obligation of sustain it with majesty, pomp and honor). It would be absurd to force the Federal Government to support something that could be a chimera”*.

Moreover, diverse constitutional dispositions are connected to the religious issue. It would be convenient to indicate that the word God is used in several moments in the Argentinean Constitution. It is named as *“source of all reason and justice”* and in article 19 the following words are stated: *“private actions of the men who do not offend the order and the public moral nor harm another, belong to the realm of God”*. In previous article 65 (present 73) it is arranged that *“the members of the church cannot be members of the Congress”*.

Despite the convention, several provinces recognized the Catholic Church as the province’s official religion, in their constitutions. With time, such clauses disappeared or were adapted to the constitutional text. The only one that still declares Catholicism as the official religion is the Province of Santa Fe.

It is possible to add that – in concordance with what was established by the Constitution – the Civil Code of 1869 declared all of the following as legal people with public nature: 1) the National State, the Provinces and the Municipalities; 2) the Autonomous Entities; 3) the Catholic Church.<sup>301</sup> From which the Church special status can be seen, for it is a (non’ statal) public person recognized by law. The other cults lack this

<sup>299</sup> Quiroga Lavié y otros, *op.cit.*, T I, p. 212. They refer to their support to the Supreme Court decision on “Sejan” case (1986).

<sup>300</sup> *Op. cit.*, p. 183.

<sup>301</sup> We copied the enumeration done by the article reformed in 1968 (Law N 17.711). The previous text was more ample but still maintained the Church as a public person.

condition and must register as private legal person (associations) to practice their ministry.

The National Budget has assigned an annual budget to contribute to the Church's expenses since then. During 2005 the sum of \$ 13,650,147 has been set for its support<sup>302</sup>.

### **The controversial issues**

At least three controversial dispositions were adopted in the Constitution of 1853, and were countermanded in the 1994 reform, although some of their effects still persist. All three were at their moment considered as discriminatory. Actually, these regulations had already been diminished before 1994. We refer to a) the conversion of the Indians to Catholicism; b) the requirement that established that the President and Vice-president had to be Catholic and c) the regime of Patronage.

*The conversion of the Indians to the Catholicism*, established in previous article 67, clause 15, as a faculty of the Congress "to preserve pacific treatment of natives and to promote the conversion of them to Catholicism". This disposition was anachronistic and had already been abolished by the Constitution of 1949. Based on the supposition that indigenous communities lacked of religious life and that, if they did, it was qualitatively inferior to Catholicism. After the 1994 reform, this clause was definitively suppressed. A generous disposition was introduced, however, (present art. 67, clause 17) recognizing the ethnic and cultural preexistence of the indigenous towns and assuring rights that tend to the, material and of cultural protection of their cultural identity. At present, nothing is prescribed regarding religious practices. Thus it is understood that the indigenous, are considered –as it should be– equal to any citizen of the country<sup>303</sup>.

*The requirement that obliged the President and the Vice-president to be Catholic* was established in ex-article 76, Inc. 2º, when stating that "to be chosen president or vice-president of the Nation it is required (...) to belong to the Roman Catholic Apostolic community". In addition, it was prescribed that these mandataries include in their oaths when taking office "for God and the Holy texts". During the debate, a proposition demanding all of the State

<sup>302</sup> Project proposed in 2005 (Program 17).

<sup>303</sup> Please refer to "Aboriginal People" in the *Ethnic-National* chapter and to "Aboriginal Religion and Spirituality" further on in this chapter.

employees to be Catholic was set (Leiva) or at least the high civil employees were (Lavaysse). None of these suggestions prospered and the requirement was limited to president and vice-president only, formula that also had opposition which did not prosper (Seguí). At present, this requirement has been reduced to external expressions uttered by the men in executive and to public participation in religious practices. At least two presidents exerted their positions in spite of being expelled from the church (Derqui and Perón). The 1994 reform not only suppressed the requirement to belong to the Catholic community (present art. 89), but stressed that the oath before the Congress would be taken "respecting their own beliefs" (art. 93).

*The question of the Patronage*, that is the intervention of the State in the designation of high dignitaries of the Church, was reason for disputes between the Argentine State and the Church. This practice comes from colonial times, as a result of the manifest identification between the Spanish crown and the Church. Furlong comments<sup>304</sup>: "*That identification was so that the Kings got to consider themselves in America, vicars of the Vicar of Christ, since the Church itself had invested them with privileges and rights. Among them, Patronage, so that in many situations and conjunctures, the monarchs acted as if they were also Roman Pontiffs*".

The pertinent dispositions in relation to the attributions of the Executive power (art. 86 clauses 8 and 9), set that this Power "*exerts the rights of the national patronage when presenting bishops for the cathedrals, to be proposed to the Senate*". It was also established that the Executive power "*grants passes or retains conciliar decrees, briefbulas and prescripts from the Pontiff of Rome in agreement with the Supreme Court, requiring a law when it contains general and permanent dispositions*".

It is also important to underline that former article 67 (clauses 19 and 20) attributed the following rights to Congress: "*to approve or to reject international treaties and concordats with the Apostolic Seat, the preparation of the exercise of patronage in all the country and "to admit other religious orders, besides the existing ones*".

This faculty of designating religious authorities was – from the very beginning – a source of conflicts between the Catholic Church and the

<sup>304</sup> Furlong G.J., *Historia Social y Cultural del Río de la Plata*, 1536-1810, Buenos Aires, 1969, page 92.

National Government, and even more serious issues with the Provincial Governments.<sup>305</sup> These conflicts were due to the difficulties of organization of the country and the confusion that the interpretation of the Patronage created. Patronage was an institution that the Catholic Church considered invasive of its autonomy and violator of freedom. The conflicts succeeded one another periodically throughout history and in repeated occasions answers were sought. In October of 1966, a covenant with Vatican was signed (law *de facto* 17.032/66). This covenant countermanded the State interference in ecclesiastical subjects, establishing, however, a regime of confidential consultations to designate bishops. At the same time way it solved the issue of ecclesiastical documents. This Concordat implied a concealed reform of the Constitution and was described as unconstitutional. Anyway, that practice remained during the later years in an "indeterminate state situation" which was completely solved with the abolition of Patronage in the constitutional reform of 1994.

In sum, of all the constitutional dispositions referred to Patronage that were mentioned above, the faculty of the Congress "to approve or to reject (...) the Concordats with the Vatican" (present art. 75, clause. 22), is the only one remaining. A conflict of long data has been solved.

As it has been briefly seen, the religious issue in Argentina has been subject of complicated controversies. Several of the problems related to discrimination that could be seen in the Constitution of 1853 have been overcome with the constitutional reform of 1994. In spite of the delay in certain cases (Indigenous people, Patronage), the new constitutional text has given a reasonable solution and has considerably diminished discrimination dangers. The incorporation of international documents for dealing with human rights, all of which contain clauses tending to protect religious freedom, have resulted of great contribution. The privileged status of the Catholic Church – and the financial benefit that it receives<sup>306</sup> – remain as subjects to be considered. The problem of reviewing the provincial consti-

<sup>305</sup> Di Stefano and Zanatta, *Op. Cit.*, page 281 and following.

<sup>306</sup> United Nations rapporteur on religious freedom considers the privileged bond of the catholic church as "not being in it self against human rights", as long as it does not affect religious freedom. And recommends the issue on economical subvention to be faced within the framework of a "wide poll to the religious communities". (*Op Cit*, Paragraphs 131 and 153).

tutions and laws in order to adapt them to the 1994 established principles of equality remains.

*Please refer to proposals N 30, 33, 39, 46, 55, 74, 120, 136, 137, 138, 139, 140, 167, 189 and 205.*

## ■ **Aboriginal religion and spirituality**

When the Spanish conquerors arrived to the American continent, each people and culture had its own system of representations and practices – referring to the way they explained the relation of human beings to nature, to the surrounding world, to the universe and the mysteries of life and to human transcendence. Each people had its own religion or cosmovision to explain the cosmos and the place that human beings occupy in it (as a symbolic manifestation of the social, natural and supernatural order). They had sacred principles and places and particular ways to show respect and veneration to what that they considered sacred.

Because their conception of what is divine and sacred differ from the western one, they generally do not agree to the differentiation between spirit and matter. And because they consider that the cosmos is a unit and the human being is part of it, many indigenous people prefer to refer to a cosmovission rather than to religion<sup>307</sup>.

The conquest, was from its beginnings conceived by the Catholic Kings not as a merely territorial conquest achieved by arms but as, fundamentally, a “spiritual conquest”, in order to impose their catholic faith. They had just unified Spain under the dominion of the catholic religion, after expelling to “Moors” and Jews, and thus the conqueror was always accompanied by priests whose role was to implant the catholic faith amongst the natives.

They understood religion as the only revealed truth and hence excluding the possibility of accepting other forms of religious experience. They considered theirs as the only religion, while demonizing and rejecting the others, reducing them to beliefs, superstitions or myths, and devaluating

<sup>307</sup> We will use both notions: religion and cosmovission as if referring to the same in the context of this chapter.

(when not persecuting and repressing) those who practice other forms of religiousness. We can underline as the most notorious modes of religious imposition (during the conquest and colonial times) the following: The destruction of the Nahuatl and Mayan Codex and its reinterpretation on behalf of the priests. The construction of cathedrals and churches on top the temples of Quetzalcoatl in the ceremonial center of Tenochtitlan or on the temple of the Sun in Cuzco.

Other modalities were the American replacement of sacred principles or deities by catholic saints and virgins: the cult to the Virgin of Guadalupe replaced the extended veneration to the Earth, our mother Tonantzin of the Nahuatl; the Catholic God replaced Ñanderé or Tupa of the Guaraníes; Wekufé Mapuche was replaced by the Christian demon.

From the beginnings of the Republic, our country supported the Catholic cult and the conquest's project of evangelizing the natives. This project was understood as fundamental in the attempt of homogenizing the Nation. As we have already expressed, the Constitution of 1853 stated the intention *"to promote the conversion of them (the natives) to the Catholicism"*<sup>308</sup>. Later, other (non-Catholic) Christian cults evangelized indigenous people in our territory. Thus for example: the Anglicans were inserted between some Wichí communities, the Pentecostals in Toba communities and different evangelical cults amongst Mapuches. The intention was to eliminate the natives' conceptions; As a consequence, the Wichi people practically lost their own hunting songs, and the Areté Guazú, ceremony of the guaraníes became a carnival dance.

In spite of the present Christian predominance between the indigenous people of Argentina, many maintain their cosmovission, their sacred places and ceremonies. In some cases, the catholic religiosity or other Christian expressions coexist in parallel or in syncretism with them. In other cases, their own ancestral conceptions are the ones that last. An example of these mechanisms is the persistence of the cult to the Pacha Mama in the Argentine Northwest; this cult persists in spite of the strong adhesion to the Catholicism of most of the Kolla people. Lately, with the process of recovery of the ethnic conscience, the indigenous people of several regions are recovering their religious and cosmogony practices, demanding respect towards them and the places that they consider important.

<sup>308</sup> National Constitution 1853-1860, article 67, clause 15.

One of the discriminatory mechanisms towards the religious manifestations of the indigenous people is to delegitimize them like religions or sacred Cosmovissions (different in the sense in that religions like Islamism, Christianity, Hinduism, Judaism, or Buddhism, etc are considered). Consequently, they are underestimated and hitherto reduced to beliefs, myths or superstitions. Their sacred places are not respected and they become part of the "folklore", to do so implies not respecting them neither respecting their sacred places.

There is a strong and widespread concern regarding the museums exhibition of the indigenous ancestors (whether they be mummified or not). Tradition and beliefs establish that the dead must be venerated and should be buried in accordance to religious conceptions. The idea of a continuity between life and the cosmos is widely shared by the indigenous religions and that notion is related to the ancestors. Hence, the exhibition of ancestors in display cabinets becomes an insult an object of discrimination. The Mapuches and Rankulches struggle for the recovery of the corpses off Inakallal or Panquitruz Gner should be remembered (Mariano Rosas). Although Law 25,517 of the 2001 establishes that "We will have to return to the indigenous peoples, the corpses of natives that can be found in the museums and public and private collections ", many archaeologists continue resisting. The scientific community of archaeologists is still divided by the debate regarding the treatment of indigenous remains that date to several centuries in the past. The question is if they are "pieces" destined to the scientific study or if they have to be dealt with the respect and veneration that the people demand. The dialogue between researchers and indigenous people is pending.

Article 14 of the National Constitution that states the right of freedom of cult is violated when discrimination is unfolded against religions and cosmovissions of the indigenous peoples. This discrimination also violates the recognition of the ethnic and cultural pre-existence consecrated by 75 article 17 of the National Constitution. An additional consequence is that the relationship of equality amongst indigenous towns and other people is hindered.

*Please refer to proposals N 30, 33, 39, 46, 55, 74, 120, 136, 137, 138, 139, 140, 167, 189 and 205.*



## ■ Antisemitism, Arabphobia and Islamphobia

Since the phenomenon of antisemitism holds characteristics that link it to ethnicity and national identity variables as well as to religious prejudices, we have chosen to include the paragraphs on the Argentine singularities of antisemitism in the report on religion and in the one of ethnicity and nation since its identity is also a juxtaposition of religious ethnical, national, cultural and ethical elements.

Something similar happens with the permanent synonymy between the terms Arab and Muslim, for they are structured in a stigmatizing manner that tends to unite ethnic, linguistic, national and religious characteristics as a part of a model of negativization. It is for that reason that the Argentinean singularities of arabphobia and Islamphobia are included in ethnicity and nation section as in the analysis of the chapter on religion. We here we refer to the chapter on the Argentinean singularities on arabphobia and islamphobia to be found within the chapter related to the analysis of ethnicity and nation.

*Please refer to proposals N 30, 33, 39, 46, 55, 74, 120, 136, 137, 138, 139, 140, 167, 189 and 205.*

## ■ Protestantism

### Churches of Immigration

As it is known, the protestant reform that originated in Germany in the XVI century extended quickly to great part of northern Europe and then spread to the other continents. Several of the protestant doctrines, mainly the one of the free Biblical interpretation and rejection of the papal authority, have generated the fragmentation of the protestant churches in a mosaic of diverse confessions.

No protestant religious activity is known during colonial times in the Rio de la Plata area. It is known that some English citizens living in Buenos Aires practiced their religion in a discrete fashion and in English. The relation of these very small religious circles and the rest of the Catholic society seem to have been harmonious. Furlong<sup>309</sup> states that in Buenos Aires, at

<sup>309</sup> Furlong G.S.J. *Historia social y Cultura del Río de la Plata*, TEA, T° 1 Buenos Aires, 1969, page 93.

the beginning of Century XVIII a group of English merchants, when thanking a loan received from the Jesuits, contributed to the construction of a Catholic temple while stating that "*we, the English, although protestant, wishes to thank them for their favor*".

In 1825, Great Britain recognizes Argentina as an independent State. The Anglican religion is legalized then and the first protestant church in Buenos Aires is constructed, and inaugurated in 1831: today's Anglican Pro-cathedral. A frustrated agricultural experience with Scottish people caused the foundation of the first Scottish Presbyterian Church in Buenos Aires, that still it exists the. An agreement on immigration signed with European agents brought immigration of German citizens to the Province of Buenos Aires in mid 1820's. Years later, the Government of Rosas recognizes the German Lutheran religion and in 1853 the temple was opened. All of these were small and foreign congregations that professed their religion in private and in their native language. They maintained a tight relation with the mother Churches located in their original countries, where they were churches of State<sup>310</sup>.

Ever since the middle of the XIX century a long process of immigration mainly European, begins. Protestants arrive amongst the immigrants. Thus the Swiss colonies and churches in the Province of Buenos Aires, Santa Fe and Entre Rios of 1850's are created. Danish Lutherans are located in Tandil, Tres Arroyos, Cascallares and Necochea, during the same period. Valdenses from the north of Italy and the French Saboya arrived to Uruguay and in 1859, to Argentina, and settled in the south of the Province of Buenos Aires and La Pampa. Welsh colonies are transferred to Puerto Madryn in 1865. Mennonites and groups of people of Russian and German origin locate themselves in the Province of Buenos Aires, specially in Olavarría, in 1877. Dutch protestants settle in Tres Arroyos and Rosario as from 1889. These religious communities were mainly rural and less wealthy than their predecessors were. They tended to profess their religion within their colonies or became part of the already existing congregations.

The Immigration Churches<sup>311</sup> were characterized by addressing only to

<sup>310</sup> Monti D. P, *Presencia del Protestantismo en el río de La Plata durante el siglo XIX*, Methopress, Buenos Aires 1959. An ampler comment on the subject in Villalpando W. (Publisher) Lalive d'Epinay C. and Epps D., *Las Iglesias del Transplante*, CEC, 1970 Chapters I, V, and VI.

<sup>311</sup> That Lalive d'Epinay also calls "ethnic", *Las iglesias del transplante*, op. cit., p. 175.

certain ethnic group. They emphasize cultural life, order, and are inclined to an open interpretation of the Biblical texts. They demand a high academic preaching level and they be organized according models of the representative democracies. They tend to close themselves within their communities and their activities related to proselytism are few. Generally speaking, they accept the vision of the European Protestantism in considering that Latin America was already Christian Catholic and as a consequence, their mission strategy was different from the one applied in Asia and Africa.

### **Churches of Mission**

During the second half of the XIX century, the United States consolidates its territory and begins its economic expansion towards the south of the Continent with the evident Latin American political elite agreement. Diverse sectors of upper class were inspired by the North American model that they thought symbolized an admired "New World". Thus, the Argentine Constitution organized the political power copying the presidentialist regime of the U.S.A. and not the European parliament. Sarmiento promotes education by hiring North American protestant teachers directed by Juana Manso (1869). In the '80s, a liberal generation assumes the power and trims several of the historical attributions of the Catholic Church. Therefore, the law of public, lay, compulsory and free education is passed as well as that of Civil Marriage, both in 1884. The Civil Registry is created in 1885.

At the same time, several of the protestant churches of European origin founded branches in the United States. Those branches were in time developed even more successfully than in their motherlands and also became departure points of other evangelical churches. The new North American churches did not continue with the European concept of Latin America as an already Christianized region. For instance, in 1916, after nearly 50 years in the Continent, the Evangelical Congress of Christian Work is celebrated, in Panama. The event concentrates an enormous number of denominations and groups that operated in the region and, according what they recorded they thought: "it is shown that the (Evangelical) Church cannot avoid to acknowledge the lack of faith of these lands".

In effect, towards the last quarter of the XIX century, evangelization in Spanish starts, mainly through the action of missionaries of Anglo-Saxon origin, with strong spiritualism and pietist connotations. At that time,

Protestants started to be called “evangelical”. In 1867, the first preaching in Spanish took place (Methodist). Soon after, the following branches started to arrive: Free Brethern (1882), Baptists (1884), Salvation Army (1890), Missouri Lutherans (1905), Mennonites (1912) and several other confessions. In 1864, parallel activities such as the foundation of schools and the establishment of the American Biblical Society, in Rosario began. The old churches of immigration also began to modernize themselves so that several of them began to make a parallel preaching in Spanish.

Somehow Protestantism coincided with the liberal thought and the newly born socialism developed in the intellectual and political medleys of mid XIXth century. Wynarczyk Says: *“the thinkers and, at the same time- men of political action of the XIX century, like Alberdi and Sarmiento, maintained a sociological and utilitarian vision of the protestant religion as a social requirement to produce suitable personal progress. They perceived that Protestantism was bound to an ‘ethos’ or a way of being well related to modernity and wanted to import this virtue from the Nordic immigrants, their biological support of that ethos”*.

Neither liberals nor socialists, were attracted to Protestantism in spite of their view that Catholicism was associated to lack of progress. The action of the Evangelical churches operated specially in rural and urban middle class sectors and only randomly reached popular or ruling classes. Their social militancy was, however, more visible than their number.

### **Pentecostalism<sup>312</sup>**

This new protestant wave whose activity is recorded since the second decade of the XX century can be assigned to the – as extended as controversial – popular religiosity phenomena<sup>313</sup>. In fact, Pentecostalism obeys to social causes that are related to deeper religious experiences than the mere public exhibition of its cult. Seman<sup>314</sup> explains this process as a way of providing tools to solve living problems that are not yet solved by other, more

<sup>312</sup> We are based also in Canclini A. *La libertad de cultos* op.cit.: Lavile D’epinay *El refugio de las masas. Estudio sociológico del protestantismo Chileno*. Editorial del pacifico, Santiago de Chile, 1968 Miguez Bonino J., *Rostros del protestantismo latinoamericano*, ISEDET, Buenos Aires, 1993.

<sup>313</sup> Also applicable to Catholicism. See Buting a. J., *El catolicismo popular en la argentina*, Bonum, Buenos Aires 1972.

<sup>314</sup> What we call in a distorted way “popular religiousness” is a field of practices and reli-

efficient, means. Be thus or no, Pentecostalism has expanded very widely between the popular sectors that remain marginalized by poverty.

Pentecostalism is inspired in the Pentecostal experience. An episode included in the book of Acts in which the Holy Spirit descends on Christ's disciples, reunited after his death and they begin to speak in languages (glossolalia, implicit mandate of universal preaching). The emphasis given to personal conversion and the explicit recognition to accept to God like their Lord is there rooted. The Pentecostal miracle works as a support, in addition, to other gifts that the Pentecostals associate to faith, in special, gift of healing. There is also a strong emphasis on the fight against bad and the liberation, also a – non excluding-tendency – to gather around a charismatic leader, at first with little relation to the Christian world (although it is currently being revised), hard opposition to the non-Christian groups, specially Afro-Americans and the intensive use of mass media. In some sectors (non-majoritarian) there is a certain tendency to maintain the so-called "Prosperity doctrine".<sup>315</sup> This position was rejected in our interviews with representatives of the Pentecostal Church, who, although they support the Biblical practice of the tithe, reject the doctrine of prosperity for they consider it "very dangerous".

In Argentina and in Brazil, Pentecostalism begins to extend since 1920 promoted by North American and Swedish religious movements. They have arrived in several waves<sup>316</sup>; the last one, characterized by the strong mass media presence, is of 1980. Its extension has been remarkable in all Latin America. Based on Bastian, Semán<sup>317</sup> affirms that in the beginning of the 90's a 5.5% of the total population were Pentecostal in Argentina, 7,6% in Bolivia, 20,5% in Chile, 3,1% in Colombia, 20,4% in Guatemala, 17,4% in

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gious institutions, healing and ethic or aesthetic experience that is overlapped in a conflictive way with those done in hospitals, the psychologists, school and the political party", Semán P. "Religión y Cultura popular en la ambigua Modernidad latinoamericana", en Nueva Sociedad, n 149, 1997 page 138.

<sup>315</sup> Wynarzick, *La difusión de las iglesias pentecostales...*, *Op.Cit.*, page 8, who also quotes as a source Ojeda H. D. *El Pentecostalismo en Argentina*, 1996.

<sup>316</sup> Wynarzyc, *op. Cit.*, page 11, registers three waves in Argentina. His position coincides with the one of Ricardo Mariano about Brasil "Neopentecostalismo: os pentecostais estai mudando", unpublished masters thesis of the San Pablo University.

<sup>317</sup> Bastian J.P. "Les protestantismes latinoamericaines", 39/3 Social Compass, Lovaina, 1992. Quoted by Semán P., *Religión y cultura popular... op. cit.*, page 139.

Brazil. In several of these countries the Pentecostals have presented candidates for political positions.

### **Protestantism and Discrimination**

In spite of this complex process, most of the Protestants in Argentina have gathered in a common forum that was denominated "Evangelical Christian Advice". Three Federations integrate the Council:

- The Argentine Federation of Evangelical Churches (FAIE), that concentrates the often called "historical churches" (the sum of the Churches of Immigration and Mission in our analysis), plus several Pentecostal denominations. It is associated to the World Council of Churches.
- The Pentecostal Confraternity of Evangelical Federations (FECEP), that gather most of the Pentecostal churches of the country.<sup>318</sup>
- The Christian Alliance of Evangelical Churches Federation of the Argentine Republic (FACIERA), Baptists, Free brothers and also several Pentecostal congregations belong to it.
- The Council's relation is harmonious and in some cases there are congregations that belong simultaneously to more than one of the federations.

Some additional explanations:

A part of the Free Brothers Church is grouped under the name of Christian Evangelical Churches of Argentina Federation (FICEA) and is not within the Evangelical Christian Council.

The Adventist Church of the Seventh Day considers itself Protestant but does not adhere to any of the federations nor participates in the Evangelical Christian Council.

The Witnesses of Jehovah assume some of the characteristics of the Protestant mission (as it will be seen separately), but they do not consider themselves as protestants.

The Universal Church of the Kingdom of God, historically bound to the Pentecostal strategy, is not recognized neither by the FECEP or any other Protestant group.

The exact number of Protestants in Argentina is not clearly established.

<sup>318</sup> The Anglican Church participated in the creation of FAIE and has good relations with it although not being a formal member.

There are no official censuses on the religious creeds since 1950. FAIE and FECEP state that the Protestant population oscillates between the 10 and 12% of the population of the country. The Report of the Special Rapporteur of United Nations on Religious Freedom indicates that the Secretariat of Cult could not give exact numbers to him, but that according to non-governmental calculations "that have been handed to him" the protestant population would be of nearly 7%<sup>319</sup>. He nevertheless, relativizes this estimation for it does not consider diverse variants, such as religious practice.

The Protestants have complained about constitutional articles that place the Catholic Church in a privileged condition, mainly the present article 2 (*"The federal government maintains the Roman Apostolic cult"*). And also about the other articles that existed in the Magna Carta, but that were abolished in the 1994 reform, that is to say: former 67, clause 15 ("...to conserve the Peaceful treatment with the Indians and to promote their Conversion to Catholicism"), former articles 67 (interjections 19/ 20) and art. 86 (clauses. 8/9) that regulated the patronage, as well as previous article 76 ("to be chosen president or Vice-president of the Nation is required (...) to belong to the catholic roman apostolic communion"). These last disappeared, but article 2 still remains. It establishes inequality between the cults. This, added to the existence of the present General direction of Registry of Cults leads them to conclude that "there is religious freedom but there is no religious equality" (FAIE), "at the most it is possible to speak about religious tolerance" (FECEP).

The impression of the Protestants is that there exists an "implicit attitude" in the Public Administration to consider to the Catholic Church as the only acceptable religious institution and that this approach is transmitted to society. "It is said that public education is lay, nevertheless, crucifixes are to be found in many schools and in many educative institutions prayers are done following the catholic rite". This objection extends to the presence of catholic religious symbols (altars, crucifixes, virgins, etc.) in judicial offices or administrative offices "that decide on the behavior and obligations of all the people" (Cordoba, FAIE, Adventists). The word "sect" is habitually used in a derogative fashion to refer to protestant confessions and (FAIE). According to the Pentecostals these attitudes are transmitted to civil pop-

<sup>319</sup> Report of the Special Rapporteur of the united Nations on religious freedom or beliefs paragraphs 8 to 12. The visit took place between the 23 to 30 of April 2001.

ulation and is projected in acts of hostility against their cult, for example, police denunciations that end up in police breaking outs to their religious premises and unjustified arrests.<sup>320</sup>

The Non-Catholic cults are forced to register themselves as “civil associations” at the Registry of Cults administered by the Argentine Chancellery. The fact that the Catholic Church does not have to fulfill that obligation is non-equitative: “The mere existence of a Registry limits the freedom of cults” (FAIE). Furthermore, protestants are demanded, by some municipal governments to register themselves previously in the Registry of Cults as independent of the church-head office, in order to be able to open the religious premises, “although the church-head office is already registered in the Registry of Cults” (FAIE). This practice is registered by the Pentecostals who are obliged to “to register each local congregation independently at the Registry of Cults” (FECEP). It has been argued those that the State applies the control of non-catholic Cults so as to prevent them from committing illicit act from groups that claim to have a religious cause. “It is not a sufficient reason –alleges the FAIE– for such cases appropriate penal and civil dispositions already exist”. Protestants (FAIE, Adventists, FECEP) do not complain about their relation with the Registry of Cults and with the Secretariat of Cults, that they describe as “excellent”, but against the existence of an administrative control that limits, according to their understanding, the exercise of the religious freedom.

Protestant churches have access to certain tax exemptions for being “non- profit organizations”, not because they are religious. The Catholic Church has a greater access and greater reach due to the single fact of being the Church maintained by the Government. This is clearer in the educative area: “the subventions, subsidies and facilities that Catholic educative institutions receive from the State are not barely comparable to the ones granted by the evangelical establishments in spite of being of a similar quality” (Adventist).

The same happens with the protestant social services respect to its Catholic equals, even though the protestant attendance is very generous

<sup>320</sup> Objections we detail were denounced in interviews held by us. The report of the special rapporteur (Op. Cit) has detailed similar words on behalf of the representatives of protestant, Russian and Armenian apostolic churches (paragraphs 79 to 84). Protests are more stronger in those interviews held by the realtor with the ones he calls “humanist” groups (Paragraphs 102 to 108).



and equally voluntary (the Adventists indicate the case of their service, ADRA, respect to Caritas). In the case of the Pentecostals this is still clearer. For example, the FECEP shows that they maintain about 15 centers or farms of reeducation of alcoholic and drug addicts in the Province of Buenos Aires. None of them receives State subsidy.

The Protestants cannot accede to the registry of radial transmitters. According to their allege (FAIE, Adventists, Pentecostals), the dispositions of the COMFER authorize private spaces and only work under the supposition that "the Catholic Church is equal to the State" (FAIE). In fact, the present law of broadcasting was dictated under the Military Government and was never changed. The Protestants radio programs are changed without previous warning and often cancelled. It has been indicated that in some schedules granted for Protestants programs have been reassigned to Catholic radial transmissions. The televising programs that some non-Catholic religious groups have attributed to the wealth of their sponsors, condition that is not shared by many of the protestants.

The system of access to the people in special situations: members of the Armed Forces, prisoners, patients, is without regulation. Whereas access of priests is practically automatic (by means of the regime of chaplaincies), the protestant pastors are subjected to difficult procedures and the concessions, if obtained, are based on their "good personal relations". There are cases, nevertheless, of efficient socializing work in jails. The marked presence of military chaplaincies and public catholic rites acts, lead our interlocutors to believe that a certain type of discrimination still reigns in the Armed Forces regarding entrance of non-Catholic personnel.

The Secretariat of Cult of the Chancellery elaborated a first draft law on Religious Freedom that counted with the support of the main non-Catholic groups as with the support of an important sector of the Catholic Church. Nevertheless, ulterior political changes later prevented their parliamentary treatment. The non-Catholic cults are still regimented by law 21.745 y sanctioned under the military dictatorship. Juan Navarro Floria says that this legal disposition "is in open contradiction to the due respect and promotion to religious freedom".

*Please refer to proposals N 30, 33, 39, 46, 55, 74, 120, 136, 137, 138, 139, 140, 167, 189 and 205.*

## ■ Jehovah's Witnesses

The Church of Jehovah's Witnesses was originated in the decade of 1870 in Allegheny (part of Pittsburgh, Pennsylvania, U.S.A.), where meetings of Biblical study were directed by Charles Taze Russell. The Biblical interpretation that raised from these groups of reflection soon extended to other regions of the United States and the world. Since 1909, its world-wide head office is located in Brooklyn, New York. They keep a very detailed statistic of their members with a rigorous identification of them as established by the religious practices. Thus, the number of baptized people, existing congregations, frequency of attendance and hours addressed to praying is recorded in detail. The world-wide registered number of members was in December of 2003 of 6.429.351 people distributed in 95.919 congregations. In Argentina, according to the same statistics, there are 127,985 members and 1735 congregations.<sup>321</sup>

Its missionary strategy and insertion in the country corresponds to the one we have described as "Churches of Mission", when analyzing Protestantism. Nevertheless, the Jehovah's witnesses do not consider themselves as protestants nor participate in ecumenical acts. Their preaching in Argentina started in 1924, and they had many difficulties to exert their cult, especially during the decade of 30'. In 1947, when the Registry of Cults was opened, they could register, but their inscription was cancelled the following year. They achieved to register on a stable base since 1984, with the reestablishment of democracy.

The particular conflicts they have with the State and because of which they consider themselves as discriminated are listed bellow. This list was done according to the objectives of this Plan<sup>322</sup>.

- *Medical treatment* based on the literal application of the Biblical text, mainly of the Jewish tradition; the Jehovah's witnesses are against to introduce blood (that is "life" according to the Bible) in the body, by the mouth or veins. For that reason they refuse to receive blood transfusions, although they admit, and in fact they promote, alternative methods. Our interlocutors show that absolutely safe and less onerous long-term treatments exist

<sup>321</sup> For more information see: [www.watchtower.org](http://www.watchtower.org)

<sup>322</sup> Interviews held by the team in Buenos Aires, mail and an interview with the law firm that represents them.

alternative to those that the transfusion implies.<sup>323</sup> They stumble over the resistance of doctors who in some occasions have refused to make operations and they are not protected by medical insurance. They have been able to reach some agreements with hospitals of the Capital Federal, but they lack a suitable legislative protection<sup>324</sup>. They have prepared documents to be signed by the members that are patients to express their opposition to the transfusion whilst exonerating the intervening professionals for the election of an alternative method. They indicate the existence of laws about this in Spain and Peru exists.

- *National Symbols*. They are very strict about the Biblical order to only adore God and “not to incline nor to honor” other images (Exodus 20, 5). For that reason, they do not admit the use of religious images and accept to obey the human laws “when not in conflict with God’s”. For that reason the Jehovah’s witnesses refuse to homage patriotic symbols (to sing the national anthem, to salute to the flag, to take oath, etc.). They declare to respect the Mother country and their symbols but do not recognize the obligation to make gestures that only God deserves, “there are feelings that do not need emblems”, they allege. This position has generated them many problems in Argentina and in other countries. They have had difficulties in educative institutions, especially with the young students but also with teachers. Teachers that are members of their church are able to practice appropriate historical and civil education as well as to participate in the patriotic acts, but they refuse to direct them. They indicate that in at least three occasions when they adopted this attitude were dismissed. These problems were often during the compulsive military enrollment period (see conscientious objectors).

- *Taxes*. They allege that – although they have achieved a good tax exception due to the now obtained (after 1983) legal recognition as “non-profit civil association” – do not enjoy of any other benefit due to their religious condition. In some cases (a Buenos Aires locality is indicated), municipal taxes are received to them alleging that the institution does not fulfill the requirement of thirty years of antiquity of residence in the municipality.

<sup>323</sup> They ask for medical treatments different to the ones that include the use of blood or the conservation of theirs. Many of their members accept products treated or processed with albumin.

<sup>324</sup> They allege that they have presented a project of law to the Parliament but that it was not discussed and hence has already lost the project status.

They consider that this is product of discrimination and is there is a trial with pending sentence at the Supreme Court of justice. While its interdiction s a cult lasted (between 1948 and 1984) they did not enjoy any tax exemption.

- *Conscientious objectors.* The reasons invoked by the Jehovah's witnesses to be against to the tribute of patriotic symbols, as well as its strict rejection of all form of violence, are applicable to the period in which compulsive enrollment existed. Many young believers asked to be excepted from the military service alleging they were conscientious objectors. Their petition was rejected during the military government, the militars not only did not exceptuate them but were prosecuted for "insubordination"<sup>325</sup>. These young people were jailed in periods from three to five years (some exceeded five years, and a case of a youngster who was jailed for eight years was underlined) and in almost all the cases special cruelty and brutality were dealt with. Others that were incorporated were sanctioned for "insubordination", for not honoring the patriotic symbols. All these cases were recorded in their police files as insubordination criminals. Law N° 23,044, that established the indemnification of damages caused by the dictatorship, excluded the Jehovah's Witnesses of that benefit. It is true that by means of a law the erase of the inscription from their personal files was established, nevertheless the negative record annotation persists. This can only be solved on a case by case basis. The interviews with the Jehovah's Witnesses Association and with the Legal study that sponsors most of their legal causes, the amount of about 1,000 cases raised before the Justice –that have been rejected or are still being prosecuted– arise. The people that have not presented before justice or that have preferred not to resort to justice are to be added.

- *Holidays.* The religious celebrations of the Jehovah's witnesses respond to the dates literally indicated in the Bible, that is fixed by changing lunar or solar systems not adapted to the western calendar. They do not recognize the usual dates of the western Christianity (Christmas, Easter, Pentecostes, etc.) and they have three alternative dates to the year, in which religious obligations of meditation and oration for their believers are prescribed. One of them is the commemoration of the death of Christ (14

<sup>325</sup> Conscience objetors were judged under the code of the military law when actually being citizens not incorporated to the service.

Nisan) and the other two also vary annually. They ask for the respect of these celebrations.

*Please refer to proposals N 30, 33, 39, 46, 55, 74, 120, 136, 137, 138, 139, 140, 167, 189 and 205.*

## PARTICULAR SITUATIONS

We have considered as “particular situations” those referred to sectors that, due to the abandonment of the State’s responsibility regarding their fundamental rights, have been victimized and that appeared during the diagnosis field work: people who are deprived of freedom; the released ones that have already fulfilled sentence and the “tutored”; the ex-combatants of the Malvinas War; and some situations detected in the country that are can be generalized to the whole population.

In the first case, if we consider the percentage of persons prosecuted without sentence, we can establish that women and young people are the most affected by discriminatory practices. In the second, discrimination restricts the possibilities of social reintegration: to be a released person is a stigma that conditions all the areas of daily life and labour insertion. In the third, the former-soldiers of the Malvinas war who, after the defeat, stayed “marginal”, in a liminal condition – not being military or civil –, in a situation of pending social reintegration that affected their rights in different institutional fields<sup>326</sup>. Finally, the isolated populations exemplify particular cases of discrimination that we do not want to leave aside.

### ■ People who are deprived of freedom

Imprisonment is considered – according to the own Federal Penitentiary Service – as corrective measure. They list amongst its functions: *“to guard and take care of the security of those who are being prosecuted, to promote the social readjustment of the condemned, to advise the Executive Power in everything what it is related to the penitentiary policy, to cooperate with other organ-*

<sup>326</sup> Guber R., *De chicos a veteranos*, IDES, Buenos Aires, 2004.

*isms in the elaboration of a policy of criminality prevention*" (DNSPE, 1996)<sup>327</sup>. Deprivation of freedom is considered an intervention articulated by the objective "of transforming" the individuals by means of three principles: isolation (jail compulsive confinement, with different modalities of isolation and "security"); work (defined as an essential agent of transformation), and punishment regulation (sentences do not have to "pay" for the value of the crime but are to be adjusted for a useful transformation of the prisoner during confinement). The Argentine penitentiary legislation coincides with these postulates.

Nevertheless, we are actually facing a progressive increase in the deterioration of the internal conditions due to a marked reinforcement of disciplinary instances. The lack of budget and appropriate material structures is constantly spotted by diagnoses proposed by those organizations interviewed in visits along the country.

According to the interviews, the prison population duplicates or triplicates the prisons projected capacity. There is no proper isolation between those who are prosecuted and those who have already been sentenced. There is an abuse of sentences of prolonged confinement (from 15 to 20 years); the rigidity of the controls of security have been increased (anti-riot action, provocative arms exhibition, intimidation, etc.); prison life conditions are "perverse". There isn't practically any adequate psychological attention. The percentage of deaths or suicides in jails is very high and is increasing; the pavilions of women are insufficient and lack privacy; the sanitary conditions are bad<sup>328</sup>. There are no projects for rehabilitation of the condemned, the health of the interns is precarious and medical attention insufficient. House arrest does not exist due to a lack of personnel and probation (restorative justice) is not being applied<sup>329</sup>. Some authorities recognize the existence of arrests related to particular social situations (by "looks") and that 30 or 40% of the prisoners could have an alternative system of detention or less lengthy sentences<sup>330</sup>. Prohibited substances are

<sup>327</sup> Quoted in VVAA, *Las mujeres y los jóvenes encarcelados en el ámbito nacional: abordaje cuantitativo y cualitativo en torno a grupos de sobre vulnerados de la población carcelaria*, Instituto de Investigaciones Gino Germani -UBA- Procuración Penitenciaria Nacional, Buenos Aires, 2003, p. 9.

<sup>328</sup> Interviews in Buenos Aires, Córdoba, La Plata and Mendoza, 2004.

<sup>329</sup> Interviews in Cordoba, 2004.

<sup>330</sup> Interviews in La Plata, 2004.

sold within the penitentiaries, this supposes an illegal circuit uniting in-walls consumption with outer dealers. Psychopharmaceuticals are used to drug or to handle groups of interns<sup>331</sup>. Medical care for prisoners with HIV<sup>332</sup> is not fully put into practice, sexual minorities are not considered, and are hence exposed to situations of violence during imprisonment, thus the percentage of reincidents is very high among the prisoners<sup>333</sup>.

In agreement with the Preliminary Report of the National System of Statistics on Execution of Sentences (SNEEP)<sup>334</sup>, that released information of the establishments of criminal detention of the country, 44,969 people were registered, 59% of them were processed and 39% was already sentenced. In the research done by the Penitentiary Service<sup>335</sup>, when leaving women data aside, the percentage of prosecutions is much higher: 71,5% are prosecuted and 28,5% sentenced. Young people's situation (from 18 to 20 years old) is even more serious: 85% does not have sentence. Both groups are doubly victimized, in-walls and in outer social spaces.

According to information provided, in April 2004, 24,433 people were kept imprisoned in units belonging to the Penitentiary Service of the Province of Buenos Aires<sup>336</sup>. According to the data recollection made in 2002 by the National Direction of Criminal Policy, dependant of the Ministry of Justice, Security and Human Rights<sup>337</sup> there were 9,658 people lodged in the Federal Penitentiary Service (that includes units located in different provinces); followed (in number) by people imprisoned in dependencies in the provinces of Cordoba (4,926), Mendoza (2,479) and Santa Fe (2,289). There is an estimate over-population of 17% in the whole country on the basis of the information sent by the units that handed data on their capacity and on prison population. These numbers contemplate the prisoners in criminal establishments and does not consider the prison-

<sup>331</sup> Comisión Provincial por la Memoria (Comité Contra la Tortura), *El Sistema de crueldad, Informe sobre la Corrupción, Tortura, y otras practicas aberrantes en el servicio penitenciario bonaerense 2000-2004*, La Plata, 2004, pp. 27-28.

<sup>332</sup> *Idem*, p. 40.

<sup>333</sup> Interviews in La Plata, 2004.

<sup>334</sup> Data collected in 2002 by the National Direction of Criminal Policy under the Ministry of Justice and Human Rights.

<sup>335</sup> *Las Mujeres y los jóvenes encarcelados...*, *op. cit.*

<sup>336</sup> *El sistema de crueldad*, *op. cit.*, p. 31.

<sup>337</sup> Data collected in 2002 by the National Direction of Criminal Policy under the Ministry of Justice and Human Rights.



ers in places that are not exclusively destined to the execution of sentences, such as police stations or rural police stations.

Although we did not count with information of the situation of the prisoners in police stations of all the country, a report of the Secretariat of Human Rights of the Province of Buenos Aires done in 2002 emphasizes that situation of overpopulation and overcrowding is still more serious in police dependencies. According to the General Supervision of Police, while there was capacity for lodging 2,864 people, there were 7,196 people detained in police stations. In the majority of the Departmental Headquarters of the Police of the Province, the number people duplicates or triplicates the permitted amount<sup>338</sup>.

Most of the prisoners are men (95%), of between 19 to 34 years (70%), and Argentineans (95%). A significant number doesn't do remunerated work (68%), they do not participate in programs of labour qualification (86%), nor in educative programs (71%). Most of the prisoners did not participate in any alteration of the order (85%) nor committed disciplinary infractions (74%). The most received type of sanction was to remain in their cells for 15 uninterrupted days (42%). Cases of escapes or evasion were not registered; 8% of the interns suffered injuries during the last year; 6% of the women had their children with them.

Regarding the people who are sentenced, the majority does not have safety measures (96%), 22% are reincidents, 72% does not have other sentences. In relation to the progressivity regime, half is in a treatment period, most do not enjoy transitory exits (91%), nor of a freedom regime (96%) or semi detention (99%), nor of probation programs (96%), nor is incorporated to discontinuous prison (99%), nor enjoys sentence reduction (94%).

According to the previously quoted report on corruption, the situation is still more alarming. Since 2000, *"there was an important quantitative and qualitative increase in the repeated and systematic violation of the human rights of the arrested people in provincial jails, as well as of their families"*. The prison population – in majority, imprisoned without sentence – is *"with-drawn of the most elementary rights and guarantees"*<sup>339</sup>.

<sup>338</sup> Information until April 28th 2002. Report of the Secretariat for Human Rights: "Superpoblación en de las Unidades Penitenciarias y comisarías de la Pcia. de Buenos Aires".

<sup>339</sup> Please refer to the report on corruption, torture and other degrading practices in Buenos Aires Pentenciary System (*El sistema de crueldad, op. cit.*), presented by the Provincial Memory Commission August 29, 2004. Also, Verbitsky H., "La crueldad como sistema" en *Página 12*, 29 de octubre de 2004.

In Florencio Varela, the toilets *“are overflowed and nauseous aromas emanate from them. They lack of glass in skylights, thus rain enters incessantly and makes coldness unbearable. The food is scarce. There is not enough room in schools and factories. Hence prison population is piled up, forgotten, without a suitable regime of social re-adaptation”*.

In Campana’s jail, the kitchen was constructed to provide food to 350 interns, but 971 are crowded there. The jails are thus *“rightless zones”*, subject to the personnel will. *“If State cannot guarantee the life of the interns nor avoid irregularities, crime preventive policies are useless”*. Apart from the characteristics of each penitentiary, these are conditions that are repeated.

U-23 of Florencio Varela lodges 824 human beings in a space conceived for 350. Many are without bed and thus have to alternate their sleep. The showers only have cold water. There are blankets replacing missing glasses, so prisoners live in the darkness in cells that lack ventilation and natural light. The broken latrines accumulate liquids in the corridors. Sixty detained people must live in a pavilion with three latrines, with serious sewer problems that generate a strong aroma in the pavilion and the kitchen. In another sector, there are three baths for 200 people. This fosters the appearance of infectious diseases in lungs, digestive apparatus and skin.

In several units, like U-13 of Junín, D type cattle meat (not apt for humans) was detected. The food shortage aggravates the conditions, structural lack of hygiene and toilets deficiencies increase the levels of violence between interns. Two or three prisoners share the space for one. Prisoners with fever do not receive medical attention. The cells of punishment have a nauseous aroma, lack of natural – and generally also of artificial – light, hence prisoners remain in the dark. Also they must coexist with their excrements since toilets do not have running water. There is a telephone for a thousand interns. The food is scarce and terrible.

In the corridor of a pavilion of UP-2 of Sierra Chica there is a recorder that is used by the penitentiary personnel to obstacle prisoners sleep. The food is noodle, rice, not peeled potatoes and carrots, bare bones and grease stew. *“Those of us who eat a type of stew called ‘El rancho’ because we do not have visits or we are pariahs, result disturbed of the stomach with vomits and diarrhoea”*.

In U-30 of General Alvear, *“everything is robbed and what is left is uneatable, a greasy soup or stewed corn meal. There was meat today because you came. We barely drink mate, because milk is only sometimes provided to*

*HIV or gastric patients. We are not going public about this, it is useless and we afterwards have to experience even worst situations whilst nothing changes”.*

The U-29 of Melchor Romero, the maximum security jail of the country, lacks of a place of cult, school, common patio, bakery, recreational or cultural activities. The prisoners do not have radio or television, they lose notion of time and space. The water of the shower comes out from the sewer to the wall, and as lavatories do not empty, water falls to the ground.

Degrading conditions in which the prisoners in U-1 Lisandro Olmos live “*causes the loss of constitutional sense to the jail and turns it into, literally, a deposit of human meat*”.

Less of 10 % of the people imprisoned in U-21 of Campana work, although many would like to. There isn't room in the elementary school of the penitentiary (seven classrooms).

There are neither prison treatments nor re-socializing plans in feminine Units 8 and 33. Interns are mixed despite their danger level, reincidenters or treatment stage; the use of psychopharmaceuticals is an institutionalised practice; they are administered with extreme generosity, hence drug addiction problems are accentuated or generated.

The prison population is composed by a high percentage of reincidenters. The penitentiary administration generally poses “essential” privilege exigencies of security in favour of “order” and institutional discipline to “treatment policies”: in that way, jails “produce” delinquents. In the Buenos Aires Penitentiary Service's case – in addition to the violence and the cruel conditions of imprisonment – illegality rules: prisoners are used as informants, executors of retaliation on other interns, of threats to judges, public prosecutors or defenders, or as “manual labour” to commit robberies outside the jails, etc.<sup>340</sup>.

In agreement with a report of the Provincial General Attorney<sup>341</sup>, 30% of those who recover their freedom commit a crime within the two following years, while another 15% will recur within the couple of following years. If the penitentiary formulations held special preventive objectives (with “ideals” of social readjustment, re-education, re-socialization, etc.) and they were influenced by the treatment trend – that granted extreme importance

<sup>340</sup> *El sistema de Crueldad, op. cit.*, pp. 26-29.

<sup>341</sup> *Las mujeres y las jóvenes encarceladas...*, op. cit.

to denominated “treatment” –, research seems to indicate that the circuit segments seem “liberated” of any correctional preoccupation.

*Please refer to proposals N 22, 38, 56, 131, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 194, 242 and 243.*

## ■ Released

There are 38,000 people in the Province of Buenos Aires in different legal situations that are in charge of the Released People Patronage: they are under conditional freedom, with conditional sentences, probation regimes, alternative release of a prisoner and other regimes. Around 50% enjoy a suspension of the prosecution “on try” when fulfilling conditions imposed by a magistrate, 22% fulfill sentences of conditional execution, 25% freed after having fulfilled two thirds of their sentence. There is no national statistical data regarding those who are being tutored in the rest of the country.

When a person is a prisoner, his family is also victimized. Families often loose economic aids and suffer due to visitors transfers to detention places<sup>342</sup>.

To have been imprisoned is a stigma. The social surroundings and even “*the family also discriminates he who has experienced jail*”. People cannot tell their experience, and they feel “doubly excluded”<sup>343</sup>. They undergo the expulsion of families and neighbours, they loose a stable familiar nucleus. In an environment of great unemployment, hence the condition of being released aggravates employment problems<sup>344</sup>.

The released ones, with a fulfilled sentence, find in their reference certificate a cause of greater discrimination since it prevents them from regular a job relation. In some provinces, there are two certificates: the National Certificate of Antecedents and the Provincial Certificate of Good Behaviour<sup>345</sup>.

*Please refer to proposals N 17, 56, 154, 155 and 156.*

<sup>342</sup> Interviews in Córdoba, La Plata and Mendoza, 2004.

<sup>343</sup> Interviews in Cordoba, 2004.

<sup>344</sup> Interviews in La Plata, 2004.

<sup>345</sup> Interviews in Cordoba, 2004.

## ■ Malvinas War veterans

A high proportion of the Argentine forces that participated in Malvinas War in 1982, and that directly participated in the theatre of Operations of the South Atlantic between the 2 of April and the 14 of June of 1982, were civil conscripts. Although the exact number varies according to the sources, the official numbers speak of a total of 12,400 men: 10,000 belonged to the Army; 2,000 to the Navy; and 400 to the Air Force. The proportion of civil soldiers varied according to the force and the branch within. They oscillated between 70% and 60% in the Army, they reached 40% in the Navy and around 20% in the Air Force and the aviation branches of Navy and Army. Most of the recruits were between 19 and 20 years old; just a few were older and belonged to "previous classes" although having asked for proration.

Once the war was over, the young conscripts, turned into ex-conscripts were successively and simultaneously baptised "boys", "ex-combatant soldiers", "ex-combatants", "war veterans". If during the first years of the post-war period, military and civilians assigned the ex-soldiers a status of underage (like subalterns or adolescent children who deserved a special treatment on behalf of State and the society), this status was modified throughout the years. At the moment, the ex-soldiers gather in different organizations denominated: Centres of ex-soldiers of Malvinas, Centre of War Veterans, House of the War Veteran, Federation of War Veterans, etc.

The first national census on war veterans was held between August 1 and October 29, 2004 by the Ministry of Interior. The re-listing extends to the whole the country. The census specially intends to verify the amount of existing ex-combatants in all the national territory and thus take care of their social necessities. There are 25,528 ex-soldiers and 5,000 are estimated to be added in the future, according to the preliminary data spread in October 2004. According to the data recollection, 13,786 veterans own a house, 5,223 inhabit a lent house, 2,729 share the rent and 2,720 rent by own account. In addition, 64% declare a state of regular health, 30% good health and 5% claim to be in bad health state.

The ex-soldiers want each force to take care of their health care and not to keep on being receiving PAMI's assistance as it happens at present. They state they feel discriminated as "the crazy of the war" and affirm that the percentage of work vacancies decided by law is not fulfilled<sup>346</sup>. They also ask for an economic repair for their participation in the conflict.

There was an increase of 130% in the pensions amount for the ex-combatants of Malvinas after a presidential decree of October 5, 2004. Allocations they perceive will go from today's monthly average of \$400 to \$924. A monthly allocation for son and wife and another (annual) for schooling are to be added. The increases are computed from the moment of the signing of the decree and are compatible with other allocations that they could already be perceiving. It was also established that the parents of combatants who have died in the battlefield are "direct beneficiaries" and are qualified to receive the State pension.

Nevertheless, the benefit does not contemplate physical and psychological losses suffered by those who participated in the conflict and the ex-combatants demand an extra benefit and indemnification for those conscripts ex-soldiers who, being in effective fulfillment of the mandatory military service were hurt and/or suffered physical or psychological concomitant sequels motivated by participation in battles or armed attacks by United Kingdom forces.

*Please refer to proposals N 33 and 34.*

## ■ Neighbours from isolated populations

The existence of isolated small populations in different provinces of the country is a repeated circumstance. This was worsened during the last decade due to the privatisation of the national railway system and the system of transport of passengers. In the '90, the governmental policies conceived the public service from the logic of profit and under this foundation they impelled the privatization of the transport system, with the consequent abandonment of the responsibility of the State in those areas. The interviews allow to show some cases that summarize the living conditions of these towns. We shall exemplify with two towns located about two hundred fifty kilometres to the Southwest of General Roca, Rio Negro<sup>347</sup>: 290 people live in Naupahuen while around 160 people live in Aguada Guzmán.

These populations are separated from the Valley of Rio Negro by the

<sup>346</sup> Interviews in Río Negro, 2003

Limay river and crossing the river is very difficult because bridges do not exist and paths are in a very bad shape. There is only one small primary school and one – that is not sufficient for complex problems – First Aid Room in each town. Claims addressed to government have not been listened to. Although a rural police station in each town exists, there is no court nor no close civil registry. A bus goes once a week to each town but prices for any type of load are exaggerated thus commercialization is difficult. The gas is provided in – also expensive – gas carafes. There is only one semi-public telephone in each town. Electricity is scarce and it is only provided for three to four hours a day by a generator in each zone. The order of extensions of electrical sources – that are 70 km away – has not been taken care of. The neighbours of both populations are, in general, small cattle dealers whose little income prevents them to surpass the isolation on a private basis.

*Please refer to proposals N 121, 122, 159, 181, 235 and 247.*

# III | **Diagnosis**

## Institutional fields



# JUSTICE ADMINISTRATION AND LEGISLATION\*

## ■ Justice Administration

### Security and access to Justice

The separation of powers, the State of Right and the principle of legality are usually considered as necessary requirements for the appropriate defense of human rights and the punishment of discrimination acts.

One of the most pressing conflicts in our society (Argentine and international) is the confrontation that, on the one hand, demands security to the State but, on the other, is afraid of the restriction of liberties that the citizens can undergo due to this search for security. This question has been considered in diverse opportunities during our interviews and is object of separate reflections<sup>348</sup>. To start with, and as a synthesis, we transcribe the opinion of the Special Rapporteur for the Independence of the Judicial Power of the UN as if it was ours: *“as far as the security of the State, this does not have to be maintained on sacrifice to the respect of human rights and the fundamental liberties nor it has to involve a violation of the right of being judged by an independent and impartial court established by the law, since this right cannot be object of any exception”*<sup>349</sup>.

As far as the difficulties to access to justice, this is a question intimately related to the equality and the defense of the principle of non-discrimination. The Special Rapporteur refers to the matter in the following way *“even though the law consecrates the principle of equality, the practice in most*

\* We thank the cooperation of Brenda Vukovic in the making of this report.

<sup>348</sup> See chapter on *Security Forces*.

<sup>349</sup> E/CN 4/200460, page 24.

of the countries demonstrates that certain groups of people, due to diverse reasons, do not have access to justice or, in any case, still do not enjoy equality with the rest of the population (...) specially women, people with disabilities and the ethnic, religious and linguistic minorities as well as the people who suffer extreme poverty or are infected with VIH or with AIDS or the indigenous or autochthonous peoples<sup>350</sup>.

The benefits of justice are not within the reach of most of the population of lower income. In other words, there is a sector of the population of Argentina that is not able to accede to justice due to economic and social conditions that withhold them from making fundamental rights available to them. Access to gratuitous attendance and legal sponsorship of those who cannot get legal attendance due to their lack resources constitutes an essential component of the right of being protected by justice. It is, also a premise of a judicial system organized on democratic principles<sup>351</sup>.

## Jurisprudence

In democratic societies, Judges are the primary organs in charge to apply general norms to particular cases and to arrange the coercive measures destined to their application. This function is important to guarantee an impartial juridical system<sup>352</sup>. Therefore within the doctrine the Judge is usually considered in an ample sense as the "primary organ" in the characterization of the legal system. In effect, it is practically impossible to imagine a system in which "absolute discretion" reigns. Nino says: *"In all the developed rights that we know the primary organs are forced to apply certain norms in particular cases (...) although those norms (...) are not precise, contradictory or have lagoons"*<sup>353</sup>. As a consequence, the Judge acts as a guardian of the rights and liberties of all the inhabitants, (among them the protection against discrimination). Therefore our concern is not limited to access to justice but is extended to the good administration of Justice.

Jurisprudence in our country has solved appropriately diverse cases in

<sup>350</sup> *Idem*, page 17.

<sup>351</sup> CELS, *Informe sobre la situación de los derechos humanos en Argentina*, Buenos Aires, 2002. Also, in interviews held by the team in Misiones, Neuquén and Salta (2003 and 2004) were cases of impossibility of access to justice were denounced.

<sup>352</sup> Nino C.S., *Introducción al análisis del derecho*, Astrea, Buenos Aires, 1998, pp 108-110.

<sup>353</sup> *Idem*.

which discrimination was alleged. Among others, it is possible to mention the recognition to the right of a foreigner who was a naturalized Argentinean to join the police institution; the authorization to be subjected to an operation of sex change (founded on the protection of the personal identity of the applyier); the recognition of a woman as national shooting champion declaring non-constitutional the regulation that only granted that title to masculine competitors, declaring the unconstitutionality of the limit of maximum age as established to enter the teaching career<sup>354</sup> or declaring the unconstitutionality of article 77 of the Constitution of the Province of Buenos Aires that established that the members of the higher levels of the judicial system are to be native Argentineans and prevented, in that way, the promotion of a naturalized Judge of First Instance<sup>355</sup>.

We nevertheless express our serious preoccupation before other failures that show a tendency to justify or to disguise discrimination. Among others, we have selected the following two cases.

First, the cause "Paszkowski, Andrés Pablo and other s/infracción law 23.592", promoted in 1995 before the Federal Criminal Court N° 7 of Capital Federal, in the occasion of the attack of a group of "skin heads" or "neo-Nazis" against a young person to whom they erroneously considered Jew. The attack was particularly serious and cowardly since 15 to 20 aggressors attacked a single young boy. In addition, during the trial, the psychologist who attended the victim and whom attested before the Court, was threatened of death and had to remain several months under police monitoring. In first instance the guilty people were condemned by aggravated punishment due to the delictive conduct they had unfolded – as established by law 23.592 – due to "persecution or hatred towards a race". During the appeal, in Room I of the National Chamber of Criminal Abrogation, the condemnation to the felony was maintained, but the discriminatory aggravating was not taken into account. In fact, the Chamber considered that the expressions "Heil Hitler" and "death to the Jews" during the

<sup>354</sup> "NN s/ Amparo", Suprema Corte de la Provincia de Mendoza, Sala I; "NN s/ Amparo", Cámara Nacional Criminal de Mar del Plata; "Bello, Elvira c/ Federación de Tiro", Cámara Nacional en lo Civil, Sala D de Capital Federal (confirmed by the National Supreme Court of Justice); "Abadie, Silvia Ruth c/ Gobierno de la Ciudad de Buenos Aires s/ Amparo", Cámara en lo Penal de la Ciudad de Buenos Aires, Sala I

<sup>355</sup> H. 172 XXXV "Hoft, Pedro Cornelio Federico c/ Buenos Aires, Provincia de s/acción declarativa de inconstitucionalidad"/ CSJN 16/11/2004.

attack were not necessarily anti-Semitic slogans. This distortion ended up clearly in protecting criminal discriminatory and premeditated conducts. The judges of the Court<sup>356</sup> were denounced by the Delegation of Argentine Israelite Asociaciones (DAIA) before the Council of the Magistrature.

Another case that showed the construction of impunity and concealment that, in agreement to public opinion, has implied members of the Executive and Judicial power of the time, has been the attack to AMIA<sup>357</sup>, – in July of 1994 in the city of Buenos Aires –. The sentence of the Federal Criminal Oral Court N° 3 of the Capital Federal, dictated the 22 of October of 2004, culminated a process after which the probatory material accumulated in the process could no lead to condemning anyone. By means of the liberation of the only prisoner in the cause by lack of proofs was determined. The predominant impression of the Argentine society is that it is perhaps true that technical proofs were not sufficient to clarify the crime, but that this lack of evidence is product of the absence of collaboration and elimination of indications during the first stage of the investigation from which responsible authorities for security, governing judicial policies and at that time in the country could result.

According to the judgment of Daniel Sabsay, the sentence *“shows that the trial that took place for clarifying the event suffered from truly intolerable vices. From the behavior of the judicial instance, the political scope, the relation with witnesses, the substanciation of probatory material, everything produces a sensation of lack of loyal and constructive search of truth (...) In this sense the trial of the people in charge of the attack against the AMIA is elevated to the state of most dramatic testimony of the institutional inconsistency in which the fragile and non consolidated democracy is sallying”*.<sup>358</sup>

To the attack against AMIA has to be added the non-solved attack against the Embassy of Israel, that took place 17 of March of 1992 when a bomb exploded killing 29 people. The procedure was made before the Supreme Court (different from the present one) and it has still not arrived to any elucidation.

<sup>356</sup> Camaristas Alfredo Horacio Bisordi, Liliana Estela Catucci and Juan Carlos Rodriguez Basavilbaso.

<sup>357</sup> A powerful bomb exploded the 18 of July of 1994 in the Asociación Mutual Israelita Argentina (AMIA) and 85 people died.

<sup>358</sup> Sabsay D., “Reflexiones en torno al fallo de la AMIA”, en *Revista del Colegio Público de Abogados de la Capital Federal*, N 80, December 2004, pages 10-11.

## Justice Management<sup>359</sup>

Beyond the contents of these sentences, some reflections on the correct management of justice, – as it plays a fundamental role in the promotion and defense of the fundamental rights, among them the one of not undergoing discrimination – can be done. An important element in this aspect is to count with financial independence from the other powers. The unequal allocation of financial resources must be evaluated regarding the Public Ministry against the Official Public Defender and compared to the General Attorney.

Another fundamental aspect is the necessity of renovation of Federal Justice and the urgency of filling the vacancies with meritorious and independent judges. Currently (and along the last years) vacancies are not being filled and harming the fundamental competency of the good administration of federal justice.

The incorporation of ad-honorem employees during years to the judicial power, called in such a way for not being paid, is a practice that goes against the dignity of work and against the basic principle of salary for the work done and non-discrimination in the labor field and same salary for same job. Necessary measures for the eradication of this practice are to be implemented.

Lack of impartiality and independence of the judicial power in those provinces where Justice is subordinated to the local political power is worrisome<sup>360</sup>. This is exemplified in sentences obedient to the guidelines of the governing party, the dictation of laws that tend to limit the judicial independence and the expulsion of the system to those who don't fit the profile of the required judge and the incorporation of those that demonstrate docility. This distortion also operates in some provinces through the inadequate operation of the Council of the Magistrature with pronouncements that do not arise from objective criteria but from the discretion of their members. For that reason its composition is previously changed with the designation of obedient and permeable to the dictamina of the political power, hence turning this institution into an appendix of power.

*Please refer to proposals N 1 - 60.*

<sup>359</sup> We here follow CELS, *Denuncia por la situación de la administración de la Justicia en Argentina ante la CIDH de la OEA*, 2003.

<sup>360</sup> As one of the many cases that are of public domain, we mention the one that in Santiago del Estero provoked (in 2004) the intervention of the national government regarding the executive and judicial power of that province.

## ■ Legislation

### The Constitution

It is important to notice some discriminatory elements that are still to be found in the National Constitution and that have not been modified in the last reform of 1994, in spite of being not coherent with the times being<sup>361</sup>. Such is the case of article 2 that states that *“the Federal Government supports the Catholic Apostolic Roman cult”*, entailing hence, inequality respect to other religious confessions. This question is in detail clarified in a section of this report<sup>362</sup>.

The second case is the disposition of article 25 of the National Constitution that expresses that: *“the Federal Government will foment European immigration; and will not be able to restrict, to limit or to burden with tax the entrance to the Argentine territory of foreigners whose object is to work the land, to improve the industries, and to introduce and teach sciences and arts”*.

This disposition was established the initial writing of the Argentina Constitution of 1853. By then, the “Desert” meant for the Constitutionanlists the great obstacle for the making of a nation. The overwhelming visions of the Argentine desert exposed by Sarmiento in his book “Facundo”. Civilization and Barbarism corresponded with the thought of Alberdi reflecting as it follows: *“What names will you give, what names deserves a country with 200,000 league of territory and 800,000 inhabitants? (...) A desert, but which is the convention that corresponds to a desert? The one that serves to make it disappear; that the desert ends up being so and becomes an inhabited country. Thus in America, to govern is to populate. To define otherwise the government is to not know its South American mission”*<sup>363</sup>.

The option chosen in the making of the Magna Carta, in opposition to the existing restrictions regarding population that came from colonial

<sup>361</sup> As it is known the reform of the constitution held in 1994 was the result of a political agreement that previously limited the reform of the second part (this is the section addressed to the organization of the State) but leaving without changes the first part of the Magna Carta known as the “dogmatic” part of the Constitution. Is precisely there were the two articles here mentioned are.

<sup>362</sup> See section on “Religion in the conformation of the Argentine State” in the chapter on Religion.

<sup>363</sup> Alberdi J.B, *Bases y puntos de partida para la organización política de la República Argentina*, Estrada, Buenos Aires, 1959, page 239.

times, was to populate the country by means of the stimulus to immigration. The will of the members, following Alberdi, is that immigration could not be restricted nor be limited, in no circumstance nor by any pretext<sup>364</sup>. The question: is then which immigration?

The political and intellectual class of Argentinean mid XIX century had a great admiration of the European culture, particularly by Anglo-Saxon one, defined as "identified with steam, commerce and freedom", in the words of Alberdi<sup>365</sup>. The Argentine State organized as the North American presidentialist model and the promotion of European immigration was established as a state obligation. In effect, the Constitutionalist considered Europe as "the part of the world with which it recognized greater affinity of culture and style"<sup>366</sup>. For that reason they considered that European immigration as the most suitable for the material and moral progress of our community. It is evident that this decision even implied the lack of merit of the Argentine indigenous people and of the Spaniards<sup>367</sup>.

This article has lost vigency for its strict application would be discriminatory. Jurisprudence has restored, in the application, the principle of the equality as far as the treatment of immigrants regardless their origin<sup>368</sup>. Nevertheless, the text of article 25, for reasons that appeared at the last moment in the constitutional text although it is anachronistic and contradicts the principles of equality that consecrates the Constitution and incorporated international documents to the same one in art. 75, clause 22. Constitutionist Miguel A. Ekmedjian says that this position in a yet more drastic way when commenting the text of art. 25: "*This difference is today unjustifiable (...) From the present perspective on these concepts generalized repulses arise because they contain a strong dose of authoritarianism*"<sup>369</sup>.

<sup>364</sup> Zarini H.J., *Derecho Constitucional*, ASTREA, Buenos Aires, 1999, page 547, when referring to the circumstances that determined the sanctioning of article 25 of the National Constitution.

<sup>365</sup> Alberdi J.B, *op.cit*, page 238.

<sup>366</sup> Bidart Campos G., *Tratado Elemental de Derecho Constitucional Argentino*, EDIAR, Buenos Aires, 1994, TI, page 224.

<sup>367</sup> In fact, Alberdi makes a parallel regarding the lack of capacity to forge a country both "Spaniards and indigenous people", *op. cit.*, page 239.

<sup>368</sup> See the cases quoted by Zarini (*op. cit.*) and Bidart Campos (*op.cit*) following the already mentioned paragraphs.

<sup>369</sup> Ekmedjian M. A., *Tratado de Derecho Constitucional Argentino*, Depalma, Buenos Aires, 1994, T II, page 722.

### **The Urban Code of the City of Buenos Aires**

The approval of the Code of Urban Coexistence on the part of the Legislature of the Independent City of Buenos Aires, in March of 1998, countermanded the police contraventional system – and therefore, the arbitrary detentions deriving from it – and meant an advance in the respect of the fundamental rights of the citizens. The most used contraventional figures described personal characteristics of the people – instead of conducts – that affected certain groups of people based on their social condition, their sexual orientation or age. The Judicial Power – in spite of the manifest unconstitutionality of his norms – guaranteed, often in an almost automatic way, the use of the detentions due to police edicts.

Since the implementation of the new code, different political actors from the legislative and executive powers and from the Government of the City of Buenos Aires, have insisted on impelling reforms to the Code of Coexistence so as to modify the norm that prohibits the preventive police detentions and incorporate as criminal figures of the legislation: prostitution in the public space, the “marauder” or “intruder”, the “non justified presence” or similar figures. In this way, actions would be sanctioning as even when not contemplated in the National Criminal Code hence reducing the individual guarantees. Criminalization of the social protest would also be increased. Unfortunately the arbitrary action of the police – on who we had received many accusations – leads to doubt in relation to freedom (police action that has not generally proved to be well controlled).

### **The new law of immigration**

A remarkable advance has already been indicated in other part of this Report<sup>370</sup>. This advance is the approval of the new law of migrations N 25.871, promulgated by the Executive power the 20 of January of 2004, hence leaving without any effect the so-called “Law Videla” that granted to the Direction of Migrations discretionary power to order the detention and expulsion, without judicial order, of people born abroad, even separating mothers born abroad from their children born in Argentina. The new law

<sup>370</sup> See section on “Latin American Communities” of the *Ethnic-National* chapter and also the chapter on *Migrants and Refugees*.



does not allow the expulsion of any foreigner with the exception of the existence of objective reasons, such as the existence of criminal causes that justify it, and always with possibility of appealing before justice. It forces, in addition, schools and centers of welfare to open their doors to the foreign residents even when undocumented.

Nevertheless, the correct implementation of this law requires its reglamentation to be done in a way in which all the bureaucratic ties are eliminated and the high costs that prevent the immigrants from regularizing their situation and thus to avoid being expelled under the pretext of being in illegal condition, which generates a sort of vicious circle. Also, to fulfill these changes it is fundamental *"to urgently face the deep reform of the Direction of Migrations: it is necessary to reorganize it and to deeply enable the personnel (already marked by an institutional history of one hundred years of exercise of political persecution and racism)"*<sup>371</sup>.

### **The Optional Protocol of the CEDAW**

The constitutional reform of 1994 established the recognition of constitutional hierarchy to the Convention for the Elimination of all modes of discrimination against women (CEDAW) that demands the States adoption of measures tending to the elimination of the forms of discrimination against women. In 1999, the General Assembly of the United Nations approved an Optional Protocol to the mentioned Convention, that allows to denounce before an external organ – when local justice does not give answers to situations that affect the fundamental rights of the woman in particular cases or massive and systematic violations<sup>372</sup>. Although the Protocol was signed by the Argentine State on the 28 of February of 2000, its ratification is still pending, for it must be approved by the Congress on request of the Executive authority. Several projects of law for the approval of the Protocol, one in the House of Representatives and three in the Senators' Chamber exist at the moment. Argentina is the only country of Mercosur and one of five Latin Americans that has still not ratified this Protocol.

<sup>371</sup> Interview held by the team with Professor Enrique Oteiza, President of INADI in Buenos Aires, 2004.

<sup>372</sup> See chapter on *International Context and National Background*.

### **Article 14 of the Convention against Discrimination**

We have already referred to the Convention on the elimination of all forms of racial discrimination<sup>373</sup>. As it has been seen, this international instrument constituted an extraordinary advance in the field of the international supervision for the protection of human rights. Until now this supervision is limited to the asking of periodic reports to the States and its public debate in the scope of the Committee of Experts (CERD) specialized in discrimination. An advance in this field is to open a second area of protection by means of the ratification of article 14 of this Convention. According to this article people or civil associations could present denunciations before possible violations to the Convention. A separated declaration of the signing state is required. Most of the countries that ratified the Convention have authorized through article 14, a way to show before the international community that the State is transparent in the fulfillment of international obligations. Argentina, despite the diverse initiated projects, has not formulated this specific ratification. This omission is, in our opinion, unjustifiable.

### **The indigenous condition**

The indigenous communities live today mainly as second class citizens within the modern nation-State that frequently excludes them under pretext of understanding their languages, religions, cultures and forms of life as inferior to the dominant society. Being native societies, the original peoples not only vindicate the continuous occupation of ancestral land or, at least, from them but also the quality of the bond that unites them. The land, the habitat, the landscape, the territory, are more than a media or an object of production to them. As it puts together in a symbolic way social, political and cultural unity of the group, they are the indispensable condition for the maintenance of their identity as a community<sup>374</sup>.

The constitutional reform of 1994, in its article 75, clause 17, established that *“the recognition of the ethnic and cultural preexistence of the Argentine indigenous peoples (...) corresponds to the national congress. To guarantee respect to their identity and the right to a bilingual and inter-cultural educa-*

<sup>373</sup> *Idem.*

<sup>374</sup> CELS, *op cit*, 2002. See also the section on “Aboriginal people” in the *Ethnic-National* chapter.

*tion; to recognize the legal function, possession and community possession of the lands that they traditionally occupy, and to regulate the delivering of other lands apt and sufficient for human development, none of them being alienable, transmissible nor susceptible of burdens or embargoes. To assure its participation in the management referred to their natural resources and the other interests that affect them. The provinces will be able to exert these attributions concurrently”.*

Covenant N 169 of the International Labor Organization (ILO) on Indigenous and Tribal Peoples in Independent Countries was ratified by Argentina in 2000 and was put in practice in July 2001. In this way, the State has tried to fit legally with the international concert whose frame of reference is covenant N 169, creating a special figure to the aims of the recognition of the legal function and position of agent: the inscription of the Community in a special registry<sup>375</sup>.

Law N 23,302 created the National Institute of Indigenous Affairs (INAI), an organism for the application of the policy directed to the indigenous peoples that establishes the competition of the National Institute of Indigenous Issues in the management of land transferences. The form whereupon this organism faces the defense of indigenous territorial rights has still not been fruitful in the measurement regarding the property of land where legal insecurity of the indigenous communities persist. It is more serious in the cases of provincial fiscal earth, in which the INAI recognizes their impotence to press the local governments, extremely reticent on this matter<sup>376</sup>. The creation of local provincial organisms superposes their management to the management of the INAI without giving solution to this delicate situation.

In spite of the existence of the National Registry of Indigenous Communities, that works in the INAI, several provinces actually do not know the national legal function and position of agent of the indigenous communities and inscription as civil associations, – which is quite different to the characteristics of an indigenous a community organization – is still being demanded. This implies a discriminatory treatment respect to these communities that seek to organize independently based on their own culture.

<sup>375</sup> Rodriguez Dutch D., “La organización Mapuche en la patagonia”, in *La situación de los derechos humanos en Argentina. Informe Anual del Comité de Acción Jurídica*, CAJ, Buenos Aires, 2003.

<sup>376</sup> Interview held by the team with members of INAI in Buenos Aires, 2004

It is worth to remember the opinion of the Committee of Nations United for the Elimination of Racial Discrimination (CERD) on the subject as it exposed in its conclusions and recommendations in the report presented by Argentina in 1998. The report says: "With regard to the transference of ancestral land and properties to the native communities, it can be noted with preoccupation that the problems subsist and that, in certain cases, enormous difficulties, often caused by the proprietors of the land, delay the transference. It is also indicated with restlessness that some communities have been object of intimidation and pressure so as to resign in the vindication of those lands. In addition it is lamented that information regarding procedures of consultancy on behalf of the indigenous communities during the process of transference of land has not been provided"<sup>377</sup>.

Finally, it is worrisome that symbols belonging to our culture drag conceptions of discriminatory nature against our original peoples. So is the case of the anthem of a Province of the south of the country that refers to the "Campaign of the Desert" in a laudatory way by expressing that "the Spaniards set a seal on the Tehuelche soul". This anachronistic reference justifies our recommendation of releasing and adapting the national and provincial laws and other significant documents.

*Please refer to proposals N 1 - 60.*

<sup>377</sup> Interviews in Mendoza, Neuquén and Salta, 2003-2004.

# PUBLIC ADMINISTRATION

It is relevant to start the analysis of public administration discriminatory social practices by the axes that go through the matrices of their production, as well as through some specific areas that condense the modes of exercise of the “regulatory” and “normalizing” practices of discrimination (we understand as normalizing the adaptation to a pattern of behavior, habits, physical look, etc. that is postulated as the only legitimate one) and in the fields in which these regulations are instituted. Certain areas of the State are important spaces for the construction of the discriminatory matrices and hence are central when thinking about the modes of dismantling them and for the proposal of actions for social integration.

If the State is a complex reality formed by its bureaucratic-administrative aspects as well as by its legal ones<sup>378</sup>, it is within the institutional sphere of the Executive, Legislative and Judicial powers (as operative fields for the formulation, implementation and execution of public policies) were certain obstacles and barriers<sup>379</sup> – that withhold or condition the exercise of human rights and the enjoyment of a full citizenship for the population – are concentrated. These obstacles being:

- *Subjective barriers* that articulate on two axes: on the one hand, lack of knowledge (passible of being meliorated by information); on the other, self-affirmation on behalf of the victimized groups (that supposes the need of implementing formative and reflexive interventions);
- *Formal barriers*, when norms or resolutions are not fulfilled so as to allow everybody’s access to the same rights (for example, disabled people);

<sup>378</sup> O’ Donnell G., “Acerca del Estado, la democratización y algunos problemas conceptuales” in *Desarrollo Económico*, Vol. XXXIII, N° 130, 1993, p. 7.

<sup>379</sup> Interview with Diana Maffia, former Joint Defender for the city of Buenos Aires, 2004.

- *Political barriers*, when the norm exists but there is a lack of the required resources – being financial or human – in order to implement them as a public policy (for example, the case of the law of sexual and reproductive health);
- *Judicial barriers*, when there are none or there are deficient mechanisms of access to justice allowing rights demandability.

Two of the mentioned barriers are to be found within the executive branch (that is, the national public administration): the formal one, for it is there where specific resolutions are formulated regarding a norm allowing everybody's access to their rights; and the political one, because it is where the necessary material resources for implementing it as a public policy are administered.

We are interested in the mechanisms upon which these practices operate with the aim of suggesting actions tending to the disarticulation of the logic that sustains discriminatory practices and to offer an orientation for the formulation of actions to cooperate in the design of pluralist cultural matrices.

The lasting of institutional discriminatory practices obeys to a scenario drawn through by two contradictory logics that “erode” the Human Rights Paradigm of universal citizenship. The functioning of these logics does not always depend on the discursive awareness of the actors but generally lies on habits and is protected by a moral that is not revised: the *logic of contract amongst pairs* and the *logic of status* establish two universes of meaning that although being originated in different time periods are coetaneous.

*Contract logic* operates amongst individuals that are classified as pairs or alike. *Status logic* gives an order to relationships between categories that exhibit marks or classificatory traces that are expressed on differential values within a hierarchical world. These classificatory signals are built and perceived as indelible. Once formal barriers are surpassed, even when we have laws guaranteeing non-discrimination, *status* introduces inconsistencies and regulates hierarchization discriminatory practices.

Policies originated in State administration have no similar effectiveness in the whole national territory and in all the social strata<sup>33</sup>. Effectiveness of the law is irregularly extended throughout the territory and social rela-

<sup>380</sup> See *Areas of Analysis* in this document.

tionships –being ethnic, sexual, class or others. Some regions of the country, that have weaker State bureaucracy, create or reinforce local powers with a high level of “patrimonial”<sup>381</sup> or personal domination. Legality that supposedly regulates the national territory is “privatized” based on existing power asymmetries amongst different social sectors<sup>382</sup>.

The original hierarchical structure tensions institutional fields and organizes modes of social normalization. In doing so, it relates them to a scale in which class differences, gender, sexual orientation, age, region, country, ethnic, religion, skills, etc, set a complex order upon power relations and subordination. *Status regime* builds up a routine of procedures, legitimized by habits, that erodes the *contract regime between pairs*; hence generates actions of moral violence. This type of moral violence can be seen in the administrative practice of the public sector, in some regulations and within the normative body<sup>383</sup>.

An analysis of denounces on discrimination presented to INADI<sup>384</sup> shows the way in which institutional discriminatory practices operate in the making of a symbolic construction of a negative “otherness”. A type of construction that tends to “naturalize” itself in a process of diminishment of rights – through different “hostilization” modalities – that reaffirm the *status logic*.

Among the reported discriminatory practices, it may be noted that *Verbal aggression* (insults, discredits) includes the diverse levels of verbal violence with discriminatory content as long as they do not involve further consequences. *Graphic aggression* refers to marking procedures consisting of public spaces graffitis, discriminatory symbols spreading, etc. *Commu-*

<sup>381</sup> Oszlak O., “Políticas Públicas y regímenes políticos. Reflexiones a partir de algunas experiencias latinoamericanas” in *CEDES*, Vol. 3, N° 2, Buenos Aires, 1980. Quoted by Scialpi D., *Violencias en la administración pública*, Catálogos, Buenos Aires, 2004, p. 38.

<sup>382</sup> O’ Donnell, *op. cit.*, pp. 10-12.

<sup>383</sup> O’ Donnell calls “poliarquías” to the “really existing democracies”, understanding those are legal systems that include the rights and guarantees of western constitutionalism (elective public authorities, free and clean elections, universal suffrage, right to compete for public offices, freedom of speech, alternative information, freedom of association). He points out that these democracies nevertheless have different levels of “democraticity” regarding degrees of justice and equality within various social spheres. O’ Donnell G., *Contrapuntos*, Paidós, Buenos Aires, 1997, p. 307.

<sup>384</sup> Interview with Luisa Galli, INADI’s Denounce Area Coordinator. See also Feierstein D., Noufour H., *Informe sobre las denuncias sobre discriminación presentadas al INADI*, 1999, INADI, Buenos Aires, 2000.

*nicative broadcasting* refers to media marking ways in their diverse forms. In addition, *Institutional marking* involves the ways in which the diverse State bureaucracies take in differentiations and negativities emerging from their own public discourses or their officials. Generally, this level comes along with other type of actions, included in the phase characterized as "hostilization". This phase begins with practices such as *Denial of access, stay and/or circulation* and is followed by diverse ways of Labor hostilization (change of duties, inferior salaries, discriminatory personnel selection, etc.) and by *Severe labor hostilization* (sacks, suspensions, etc.). While the *Limitation or denial of essential services* is focalized in health and education provisions, the *Administrative procedure hostilization* includes those cases in which further processes are required only due to certain characteristics withheld by the involved individuals. *Legal hostilization* implies the different levels of judicial action (for example, unproven complaints or complaints based upon the charged individuals' characteristics). Also, *Damage* (attacks on buildings, cemeteries, institutions) involves a level of direct material violence even though it is not directed towards the body of an individual but to its representations. Finally, *Institutional physical hostilization* (illegal mistreat, unjustified detention) presupposes the exercise of direct material violence applied by personnel related to the State apparatus. In many occasions, this tends to be an intentional phase with the aim of building consensus for subsequent exclusions (deportations, exiles) or reclusions (confinement, isolation).

When analyzing cases through their different levels of relevance (as theoretically analyzed), private institutions hostility can be characterized as limitation or denial of access, permanence and/or circulation in different places and limitation or denial of essential services. State hostilization is, on the other hand, centered in physical aggression (displayed by security forces), legal ordering and discrimination in administrative procedures. Labor hostilization is present – with a similar intensity – both in public and private institutions.



**Discrimination reports<sup>385</sup>**  
**Levels of relevance (%)**

<b>Agent</b>	<b>Practices</b>	<b>Persons</b>	<b>Private Institutions</b>	<b>State Institutions</b>	<b>Anonymous</b>	<b>Total</b>
Abstract or unproven practices		25	25	50	-	100
Symbolical mistreat		23,08	30,77	46,15	-	100
Verbal aggression		68,82	16,13	13,98	1,08	100
Graphic aggression		21,43	42,86	-	35,71	100
Communicative broadcasting		41,18	58,82	-	-	100
Institutional marking		75	25	-	-	100
Denial of access, stay and/or circulation		12	76	12	-	100
Threats		100,00	-	-	-	100
Labor hostilization		2,78	56,94	40,28	-	100
Limitation or denial of essential services		-	70,59	29,41	-	100
Administrative procedure hostilization		-	23,68	76,32	-	100
Legal hostilization		-	-	100	-	100
Damage		-	-	-	100	100
Physical hostilization		100	-	-	-	100
Institutional physical hostilization		-	9,09	90,91	-	10
<b>Total</b>		<b>20,25</b>	<b>41,37</b>	<b>36,62</b>	<b>1,76</b>	<b>100</b>

From this analysis we can establish that the double logic (*status regime* and *contract between pairs*) configures a double administrative system, social and normative system, a kind of parallel system with its own tradition and legitimacy that is intertwined and related to the legal administra-

<sup>385</sup> Source: Feierstein D., Noufourri H., *Informe sobre las denuncias por discriminación presentadas al INADI, 1999*, INADI, Buenos Aires, 2000.

tive system. Confrontation between the two systems and administrative logics goes along with instrumental and symbolical features.

There is a clear institutional stratification within the state administrative bureaucracy: on the one hand, permanent personnel (“personal de planta”), with labor stability under the basic juridical regime of the public function (law N 25.164) with routine and obsolete procedures, low salaries and in a great number of cases a marginal mission within the state activity. On the other hand, a non-permanent professional and administrative staff (“cabinet”, “hired”, “transitory”), without labor stability but related to the ongoing administrations and that usually take on central activities in terms of a governmental political project.

Duplication of activities is practiced so as to have “trustable” personnel even at the expense of overlapping functions. Hired personnel usually enjoys technical and political required trust, therefore concentrating the highest professional level and hence acquiring financial resources and the necessary political avail that ignores established organizational charts, functional interdependencies<sup>386</sup>.

Institutional stratification produces bureaucratic discriminatory practices in the “inside” of the national public administration. There are 64 echelons or different employment systems; cliental assignments of employment; pronounced salaries inequalities for similar functions; privilege regimes; mandatory trainings addressed only to certain echelons; personnel hired as autonomous workers even when the nature of his work does not coincide with that situation; retributive units distributed with political criteria; etc.<sup>387</sup>.

It is on the one hand necessary to generate information and formative actions addressed to the different administrative areas and administrative agent’s appropriation of the logic of the *contract between pairs*. On the other hand, society participation models – models of participation of the ones that are being administrated – are also to be developed. These are to lead actions in the realms of direction and social control of the public administration while tending to disarticulate the instrumental *logic of status* in the implementation and control of public policies.

The double instrumental and symbolic flexion that signs the confrontation between the legal administrative system, ruled by the logic of contract,

<sup>386</sup> Oszlak refers to patrimonialist regimes that develop forms of “bureaucratic imperialism”. *Op. cit.*

<sup>387</sup> Scialpi D., *Op. cit.*, pp. 349-352.

and the parallel one (the logic of status) provides us with criteria to organize proposals addressed to disarticulate discriminatory social practices in different intervention dimensions.

Legislation has, alongside with its instrumental aspect, a symbolic role in the control of a hierarchizing logic. The discourse of the law is articulated as a discourse of truth regarding social functioning and from its legitimacy to “name” what is right and what is wrong acquires a great amount of power. In such a way, law “places the names” of the contract regime, enouncing rights, duties and prohibitions.

Hence, the discourse of law can be thought as a “system of names” with an enormous persuasive power. The discourse of law makes public those possibilities of aspiring to rights, guarantees and protections<sup>388</sup>. By making those possibilities public, the strength of the law does not lay solely in imposition of behaviors but also supposes a capacity of creating representations and mobilizing individuals in the benefit of an idea or an image; by doing so, the discourse of law gives shape to social reality.

Therefore, this Plan elaborates proposals addressing the derogation of discriminatory norms and the sanctioning of new ones responding to the detected needs and completion of normative gaps. These norms have not only a preventive function – indicating and juridicially defining polices tending to avoid discrimination – but also a sanctioning function while typifying the criminal behaviors.

The matrix of citizenship building proposed by State policies has historically delimited the “frontiers” between inhabitants, being not always of a territorial nature. These frontiers propose symbolical limits in the integration or expulsion of those plausible of becoming State citizens, which means withholding the recognition of their rights.

Different organs of control, defense and security (security forces, migration offices, etc. within their jurisdictions) have been privileged by the national public administration as those addressed to the “constitution and defense” of those – internal and external – frontiers. Measures that the executive branch is to apply in those spheres are directed to the different areas of intervention and are to be found in the Proposals chapter of this Plan.

*Please refer to proposals N 1 - 42, 61 - 156.*

<sup>388</sup> Segato R., *Las estructuras elementales de la violencia*, Prometeo-UNQ, Buenos Aires, 2003, pp. 107-127.

# EDUCATION

School institutions can be understood as State agents that build – or contribute in building or hindering – discriminatory processes within society. They can be regarded as privileged stages for the observation of the hierarchization processes and clusters of meaning that articulate historically rooted valorizations or beliefs<sup>389</sup>.

Prior to the educational reform that started in 1993 and that is currently valid, teaching was structured in two levels: elementary school (compulsory, seven years in length) and high school of a five-year duration. Study programs and plans for the first level were full responsibility of provincial jurisdictions. The National Education Council – with scope over Ciudad de Buenos Aires and National territories – established programs for national schools in provinces whilst general orientations later spread through specific channels, such as *The Common Education Monitor*, or by inspectors. High school plans and programs were elaborated by the national Ministry of Education which was also responsible of the great majority of these institutions. In 1978 the National Education Council was dissolved and elementary schools were transferred to provincial jurisdictions. The same happened in 1993 with high school management.

Since the sanctioning of law 1420 in 1884, elementary school – compulsory and free, controlled by the State – has been the most efficient field of production and transmission of valorative orientations in our country, due to its characteristic of agent of cultural imposition that has a wide coverage and influences in a certain moment of the vital cycle. Children socialization – future citizens – are developed under the dominant reference framework therein. Elementary school resulted to be the spine of the educative system and therefore was a central element in the process by which the Argentinean

<sup>389</sup> Margulis M. et al., *La segregación negada*, Biblos, Buenos Aires, 2000.

State was constituted as a stance of the organization of power and of exercising of political dominance since the end of the nineteenth century.

Once the civil rebellions were solved and the state territorial expression was set, the issue on how to find a way of “producing citizens” – that is, how to shape a shared culture able of legitimizing the political jurisdiction of the new State upon an heterogeneous population – arouse in the political debate of the 1880-1910 period. Liberal nationalism, fostered by the Argentinean revolutionary regime during the first years after independence, implemented laws that aimed to broaden access to nationality with no distinction regarding neither culture nor language. Latter social struggles and political violence produced a revision of the initial political criteria of equality. Mandatory literacy and education were hence thought in the XIX century by intellectuals as Alberdi or Sarmiento as resources for the construction of an homogeneous community.

Towards the end of that century, the contradictory effects of modernization marked the passage from liberal nationalism onto a new nationalist conception that affirmed national identity and was supported in pretended linguistic and racial affinities and in the notion that national and State frontiers were to coincide. Within this ideological configuration, nationality equaled ethnic or race. Only those individuals that due to their own “nature” could be considered as members of a nation had the right to be a part of it. New nationalism – ethnic nationalism – was based on racist explicative principles and on its visual discrimination criteria. Once the relationship between body, nature and territory was based on the patterns of racism, its national scope was to depend on the efficiency of mechanisms aiming at the exclusion or assimilation of “other” individuals – different for ethnic, language and cultural reasons – whose “weakness” could jeopardize the strength of the remaining<sup>390</sup>.

Towards the end of the XIX century, ethnic nationalism coincided with the development of medicine as the authoritative discipline in the diagnosis of social health conditions. Between 1880 and 1910, physicians and hygienists applied upon society as whole medical distinctions between normal and pathological. Inclusion and exclusion possibilities functioned by means of the terms *health* and *disease*, and normative basic institutions (such as schools, health and legislation) delimited modes of inclusion and expulsion on the

<sup>390</sup> Nouzeilles G., *Ficciones somáticas*, Beatriz Viterbo Editora, Rosario, 2000, pp. 11-34.

basis of the condition of “healthy and decent” or “sick and immoral”. The building of the “us” and the “other” was framed within the medical paradigm.

It is hence important to set off from the paradox of the building of the Nation State when thinking about the interdiscursive agreement between ethnical nationalism and medical paradigm. The building of an imaginary community operates as a mechanism of identification – imagined as legal fiction, limited by its political borders with other nations, whose legitimacy derives in a horizontal community amongst equals<sup>391</sup> – that requires of an “other” that must be expelled. In so doing it not only traces territorial frontiers but spatial and symbolic frontiers.

As a consequence of the arrival of immigrants, the Argentinean population quadruplicated in the 1869-1914 period, jumping from 1,700,000 to 7,900,000 inhabitants. This process alongside with social, cultural and linguistic transformations was lived by the ruling elites as a “threat” to national identity<sup>392</sup>. From the postcolonial liberal nationalism – that fostered a cohesive model of the Nation-State in the newly created American republics – a shift was registered in Argentina onto an ethnic nationalism that, based in visual discrimination and marked by “higienism”, claimed for the development of citizen’s health care programs on behalf of the State. Articulation between nationalism and higienism produced discourses and supported practices addressed to identify, classify and exclude the bodies marked by the ethnic, sexual and economic difference stigma<sup>393</sup>. A certain peculiarity was therefore brought about by this medical paradigm in the shaping of the country’s discriminatory matrix.

Pedagogic positivism elaborated within the school system models addressed to repress, expulse or promote a school population and a trend denominated “normalism” that was predominant in teaching. Normalism was highly influenced by higienism<sup>394</sup>. The School Medical Corps – as well as the organisms that followed – succeeded in the practice of population selection, implementation of behavior norms and separation between health and disease. Hygienism penetrated every day life of schools in

<sup>391</sup> Anderson B., *Comunidades imaginarias*, FCE, México, 1997.

<sup>392</sup> Wainerman C., Barck de Raijman R., *Sexismo en los libros de lectura de la escuela primaria*, IDES, Buenos Aires, 1987.

<sup>393</sup> Nouzeilles G., *op. cit.*, p. 27.

<sup>394</sup> Puiggrós A., *¿Qué pasó con la educación argentina?*, Galerna, Buenos Aires, 2003, pp. 95-99.

school rituals and in teachers' speech. School hence turned into an effective mechanism of adaptation to norms.

Another peculiarity of public policies took place between the end of XIX and beginning of the XX century, when writers and pedagogy intellectuals associated themselves in the founding of a literary canon that was to facilitate the construction of identity models to be displayed at school. Challenges of the State consolidation, country's insertion in the international context, demographic growth, literacy and the beginning of labor conflicts produced the emergence of what was called "first cultural nationalism"<sup>395</sup> that by the centennial of the May Revolution (1910) postulated the *gauchesco* poem *Martin Fierro* (by José Hernández) as its cornerstone text.

A canon for the teaching of literature started being organized as from the educational reform held in 1905 by Joaquín V. González. This official canon was completed with Juan Mantovani's reform in the mid-thirties<sup>396</sup>. The organization of literary high school pieces was established under the mandate of the State prescribing a *curriculum*. Concerns about the nationalization of the immigrant had set limits on the selection of texts. At the same time, interest on *gauchesca* literature was restricted by language teaching. In this sense, literature of the '80 Generation worked as a model of the "cultivated" language. This canon remained stable until 1970 and its impact can be currently felt.

Since then, features of a liberal nationalism nature (emphasizing notions of equality and contract amongst pairs) and features of ethnic nationalism (in which stereotypes that recognize hierarchical differences and that usually tend to be imposed) coexist in the educative system<sup>397</sup>. Furthermore, ethnic nationalism hegemony at schools met some paradigmatic moments. With diverse nuances, this position has structured the Argentinean educative system and many of its manifestations are still

<sup>395</sup> The most representative public figures being Leopoldo Lugones y Ricardo Rojas.

<sup>396</sup> Alvarado M., *Problemas de enseñanza de la lengua y la literatura*, UNQ, Bernal, 2000.

<sup>397</sup> See, amongst others, Wainerman C., Barck de Rajzman R., *op. cit.*; Romero L. A. (comp.), *La Argentina en la escuela. La idea de Nación en los textos escolares, Siglo XXI*, Buenos Aires, 2004; Neufeld M. R., Thisted J. A., *De eso no se habla*, Eudeba, Buenos Aires, 1999; Margulis M. et al., *op. cit.*; Feierstein D., Wozniak J., "¿Quiénes somos? Identidad y alteridad en los manuales de enseñanza nacionales de la EGB" en Feierstein D. (editor), *El otro en los procesos educativos (Tratando de encontrar nuestros prejuicios y estereotipos en los manuales de texto)*, EDUNTREF (unpublished); Urribarri D., *Nosotros y los otros en los manuales escolares*, IDES, Buenos Aires, 1999.

practiced today. Discriminatory practices within the school structure were repeatedly denounced throughout our interviews with NGOs and people representing victimized groups. School structures turn differences into stigmas by hierarchizing diversity<sup>398</sup>.

The current Federal Education Law (N 24195) indicates that schools aim is “to strengthen national identity (...) and to reinforce Nation’s sovereignty”. As traditionally, school has a strategic role in the shaping of a shared criteria and common sense regarding the Nation, the State, its inhabitants, laws, community and history.

In this context, school books were – and currently are – basic instruments of formal socialization. That is why they can be regarded as informants of the official ideological contents that are transmitted in education with the aim of modeling social behaviors of the citizens to be. Because they regulate, they are the support of value orientations that socially circulate; traces of social messages that cause a normative effect upon the individual actor’s orientations as if they were laws and decrees. School texts are documents of arrayed convictions regarding what is to be considered as “Argentinean”, hence they can be analyzed as “ideological containers”. While teaching to read and transmitting information, they teach normative contents and by so doing they intend to mould values, attitudes and behaviors. This transmission is produced in the context of school and class authority, and in a key stage of the formation of the individuals.

Researches regarding the national identity configurations, representations of “ourselves” and construction of imaginaries about “others” in text books<sup>399</sup> verify how “an ‘imaginary Argentina’ is displayed in schools books, producing disappearances, diminutions or de-hierarchizations of certain socio-cultural types and over-representing or re-hierarchising others”<sup>400</sup>. Black people, Orientals or American Aborigines are practically absent of the map of representations that school books’ authors and illustrators present. When fair-haired and dark-haired (*morocho*) go to work, *morocho* do less valued activities and are less paid. Gender stereotypes are still present: girls play the motherly role whilst boys’ roles when playing are related to craftsmen. Feminine knowledge reigns along with masculine

<sup>398</sup> Neufeld M. R., Thisted J. A., *op. cit.*

<sup>399</sup> Romero, *op. cit.*; Feierstein, Wozniak, *op. cit.*; Urribarri, *op. cit.*

<sup>400</sup> Feierstein, Wozniak, *op. cit.*



“cooperation” in the domestic world. Community life, the street, the working world, politics, science and history belong to men<sup>401</sup>.

School texts depict a homogeneous “us” within a homogeneous country, “different” from a generalized outside<sup>402</sup>. These texts, that participate either of an “essentialist” vision – a result of a natural outcome – in their conceptualization of the nation or those that propose a “constructivist” perspective – founded on social processes – participate in a development of ethnocentric images and tend to leave an open possibility for representing the difference as “deviated” from our ideas, values, practices and habits that are considered as “normal and natural”.

Text books design territorial “frontiers” and mark features and symbolic frontiers in relation to the identity features that Argentina or the “Argentinean people” share. The country’s image and the identity of the Argentineans found in this type of literature is built in confrontation with a threatening “other” represented by neighbouring countries, distant enemies or even enemies within the Argentinean territory<sup>403</sup>.

On the one hand, elementary school was consolidated in a tradition of long and detailed curriculums. High school’s programs for the development of curricular contents were regularly brief and distributed general themes through the school year. Knowledge areas (such as History, Geography or Civism) underwent slight changes since the forties and fifties until the 1993 educational reform. Even though the distribution in cycles has remained untouched since then, significant changes were made regarding those questions that are of State interest, such as frontiers, sovereignty and national security.

The political weight was also relevant during the seventies and eighties in relation to curricular contents of Civics and got also to impact in the different denominations received by the subject<sup>404</sup>. During the Dictatorship of 1976-1983, school decentralization processes continued and elementary institutions were transferred to provinces and municipalities. Educative

<sup>401</sup> Wainerman, Barck de Raijman, *op. cit.*; Vallejos S., “Mamá me mima, papá trabaja” en *Las 12 - Página 12*, 12 de marzo de 2004.

<sup>402</sup> Urribarri, *op. cit.*

<sup>403</sup> Romero, *op. cit.*

<sup>404</sup> Civilian culture (1952-1955), Democratic Education (1956-1973), Argentinean Social Reality Study (1973-1976), Civil Training (1976-1978), Moral and Civil Training (1979-1983), Civil Education (since 1983). See: Romero, *op. cit.*

“moralization” controlled school contents veiling a mandatory catholic education – that they did not dare to impose – and prohibiting the reading of books considered as “subversive”.

Since the military coup of 1976, public education in Argentina has out-lived consequences of dictatorial repression, the subsequent social and economical deterioration and the dramatic results brought about by the neoliberal policies unfolded during the nineties. Illiteracy is today of over 15% amongst people over 14 years old and 37% of the population over 15 years are dropouts from elementary school. The national basic education desertion average is of 35% whilst it surpasses 70% in some provinces<sup>405</sup>.

Educational Reform was the generic name given to the educational policy developed since the 1993 adoption of the Federal Education Law, after which highschools and management was transferred to provincial jurisdictions. This policy defined, amongst other issues, the standardization of the contents that were to be taught, an increase in the amount of years of compulsory schooling and the modification of the educative system. Provinces accorded common elements of the system and determined which issues were of jurisdictional resolution. These changes modified the educative structure, from an elementary school and a high school to a complete cycle structure that resulted unequally implemented by the different provinces.

In this new organization, teaching at an Initial Level is succeeded by General Basic Education (EGB), of mandatory nature and nine year duration, and then followed by the Polimodal of a three year duration, having different options regarding professional choices. In addition, EGB is divided into three cycles, the third one being more dedicated to the profile of the disciplines. In this context, each jurisdiction decides whether the contents are taught by a teacher in a sole curricular space or by different teachers in different curricular fields. With the implementation of the Third Cycle two types of institutional organizations emerged: Complete EGB (that gathers the three cycles of the General Basic Education) and Articulated EGB, where the First and Second Cycles are concluded and former 7<sup>th</sup> grade is articulated with a high school institution including 8<sup>th</sup> and 9<sup>th</sup> grades. Responsibility on the articulation often lays in the figure of the pedagogic coordinator. Regarding contents, the federal organism established the design of the Basic Common Contents (CBC) for each stage and

<sup>405</sup> Puiggrós, *op. cit.*, p. 165.

cycle, distinguishing between levels and cycles and between knowledge, procedures and attitudes.

As Puiggrós states, several problems of discriminatory nature were brought about by the new structure:

- Disarticulation of the national educative system, for there is no correspondence between the educative systems of different provinces;
- Closing down of high schools before the implementation of the third cycle and the polimodal;
- Turning the first years of high school into elementary school modalities and the sharing of dependencies between adolescents and younger children;
- Teachers transference from an area of knowledge onto another (without the proper training);
- Deterioration of adults education, of special and artistic education, that were separated from the system's central trunk and are today called "special regimes";
- Insufficiency of initial education and exclusion of the child-maternal care from the public education responsibility;
- Closing of diverse options of technical teaching that lasted for decades in the country, without replacing the offer nor re-training teachers and technicians<sup>406</sup>.

Curricular contents delimitate concepts, procedures and attitudes considered as legitimate to be transmitted in the teaching processes. They represent, also, the state of the discussion on dominant perspectives in a particular historical and political context, and are fixed as mandatory by the State. Text books are organized on a series of articulations: the first one is established on the tutelary mandate on behalf of the State: school books are written on the base of official curricular contents. The second one undertakes the relation with the market and the publisher's policies and proposals: hence, displays the perception modes, prejudices and ideological perspectives that are the most widespread in society, those that have resulted hegemonic in a certain social and historical moment, the so-called epochal "common sense"<sup>407</sup>. The third is centered in teacher's presump-

<sup>406</sup> Puiggrós, *op. cit.*, pp. 191-192.

<sup>407</sup> Feierstein, Wozniak, *op. cit.*

tions and knowledges that depend on their training, their professional experience and even in their personal ideas.

Text books constitute – both in elementary and high school (or, in the current reform terms, First and Second EGB Cycle and Third Cycle and Polimodal) – a privileged observation unit that leads access to ideas, values and implicit or explicit significations transmitted in teaching, and also allows to identify and analyze which are the stereotypes that school cooperates to create.

*Please refer to proposals N 1 - 42, 157 - 189.*

## SECURITY FORCES

As it was pointed out in several of the interviews held throughout the country, Security Forces in Argentina are taken as a social control disciplinary mechanism over those persons or stigmatized groups considered as “dangerous” or “suspects” for the community. Within the traditional security organization model, crime prevention was supposed to control and discipline all forms of non criminal conducts, providing with legitimacy the “action over a person or group of persons defined as dangerous or suspects according to certain criteria or features derived from social or personal situations, and whose delictive potential is referred to those criteria or features”<sup>408</sup>. For this conception, the reference to “morality”, “good manners” and “public order” justify the discretionality of police intervention.

This type of action was not only historically oriented to social discipline but also to gain political control. It was largely shaped under the shelter provided by authoritarian regimes for which security forces were a preferential tool within the repressive apparatus and the organized political discipline. It is surprising to note that most of the fundamental laws regarding police forces were promulgated during dictatorial periods and are still valid<sup>409</sup>.

In addition, it was verified that during the 1976-1983 Dictatorship Security Forces acted under the control and command of the Armed Forces and were strongly marked by the so-called *National Security Doctrine*. This doctrine sustains a bipolar view of the world while presupposing that the nations of the world are grouped in two opposite alliances: one represents “good” (the “Western Christian Civilization”) while the other, “evil” as a residual category. Faced with this alternatives, world nations had no other

<sup>408</sup> Sain M., *Seguridad, democracia y reforma del sistema policial en la Argentina*, FCE, Buenos Aires, 2002.

<sup>409</sup> *Idem*.

choice but to align with one of these world potencies or hegemonic worlds that could confront in different ways: in total war (between the two super-powers), cold war, or even revolutionary war.

Territorial frontiers were reshaped as ideological, and a new figure emerged – the “internal enemy” – who was legitimate to fight in the defense of “western civilization’s values”. According to Comblin, *“social conflicts, political oppositions, discussions over ideas, the lack of ideological or cultural conformism are some of many visible manifestations of a permanent war (...) between West and International Communist Marxism-Leninism. It is a total, generalized and absolute war: its absorption of the whole politics is there comprehended”*<sup>410</sup>.

The Armed forces of the different countries were to participate in war aligned to a superpower, under whose influence they stood, and were to participate by combating the enemy within their country. Therefore, in Argentina and Latin America, Armed Forces were transformed into occupation forces in their own countries<sup>411</sup>. Political, religious, union militants, intellectuals and artists were seized, kidnapped and tortured in the name of national security, along with all of those that according to their Manichean criterion were suspected of threatening the “Western Christian feeling” they considered to be representing.

Because of the alleged security crisis our country is currently undergoing, the Security Forces – formed under those principles – claim for (and gain) more discretionary faculties. After over two decades of democratic governments many of the repressive practices consolidated during the last Dictatorship are still active. Security Forces practice withholds a certain number of corrective and repressive measures under the claim that minimal guarantees (innocence presumption, due process, non arrest without a previous a competent judge’s order, the non-submitting of people to torture) inhibits them from fighting organized crime.

As an alledged response to certain claims of our society, some political sectors dictate police edicts, contravention codes, or coexistence codes, in which “open” criminal figures are established hence allowing police discretionally and even worse, the deprivation of liberty and arbitrary detentions.

<sup>410</sup> Comblin J., *El Poder Militar en América Latina*, Ediciones Sígueme, Salamanca, 1978, p. 62.

<sup>411</sup> According to Ravenna H., *Board of Presidency of the Permanent Assembly for Human Rights*, Ed APDH, 1985.

In fact, the Argentinean Report to the Committee against Torture stated that the country's Federal Justice (with the exception of the city of Buenos Aires) recorded for the first semester 2004 the initiation of 90 trials due to the crime of illegal simple mistreats while no sentences were registered. In the same period, 68 trials for illegal mistreats against prisoners were promoted and only one sentence is registered, whilst 4 trials for torture were started and no sentence was registered<sup>412</sup>.

Ordinary Justice of the city of Buenos Aires, for the first semester of 2004 recorded the starting of 79 trials for simple illegal mistreat without a single conviction. Due to illegal mistreats against prisoners 264 trials were registered whereas no sentence have been registered on that subject, while the 12 trials due to torture that were started during that lapse registered no sentence<sup>413</sup>. As stated in the referred report *"two conclusions are imposed: the clear tendency to apply the figure of the illegal mistreats over the one of torture – as underlined by the Committee – and the lack of proportion between the amount of accusations and investigations started and the number of sentences"*<sup>414</sup>.

It is also verified that some sectors of society claim for longer sentences and for "direct action" under the belief that is not them who are going to result arrested for "their looks" or for being dressed poorly under the suspicion of prowling. Socially excluded persons – that cannot make their rights be valued nor defend themselves – are the ones who become victims of a repressive system and are doubly discriminated.<sup>415</sup> The composition of prison population, that is (in average) under the age of 34 and original from socially excluded sectors, is an example of the existence of a discriminatory repressive criterion<sup>416</sup>.

It can be observed that in the face of two constitutional guarantees of the same hierarchy – property right stated by article 17 of the National Constitution and communal property of the land traditionally held by aboriginal communities in article 75 clause 17 of the same text – property is preferred to ethnic preexistence. In this case, there is no normative justifi-

<sup>412</sup> *Fourth report of Argentina on the situation of Torture (CAT/C/55/Add.7).*

<sup>413</sup> *Idem.*

<sup>414</sup> *Idem.*

<sup>415</sup> Interviews in Córdoba and Mendoza, 2004.

<sup>416</sup> Please refer to the *Particular Situations* chapter.

cation but political decision based on a hierarchical system: *the one who rules, the ones who are ruled.*

A report prepared by CELS indicates that “security polices are only assumed as governability policies, scandal managements, damage reductions in the face of each new criminal act. Fast and effectist responses are preeminent to the structural thinking on the causes of the problems: responses without policies, for there seems to be no time for thinking about them. Nevertheless, this effectist responses advance in an opposite direction to the solving of those problems they are intended to solve”<sup>417</sup>.

Within this context, shanty towns “militarization” provides an example of the permanent state of exception: we have received denounces regarding security operations in shanty towns and in other territories in which people of low resources live. In these places, “requisitions and controls that would never be tolerated in other regions of the country are incorporated to the life of the neighbors”.<sup>418</sup>

We believe, following Sain<sup>419</sup>, that one of the characteristics of this situation is the lack of a security policy definition by the political power. On the contrary, we consider that what happens is that some sectors of the political power pact – explicitly or implicitly – with the police power, and hence it is the police who determines – with certain autonomy – the criminal policy and their own policy. In addition, it is possible to sustain that the constitution of criminal networks sheltered by police agencies or conformed by some of its members is the result of the indifference of sectors of the ruling political powers related to public security.

The efficiency of criminal repression depends not only on the police force but also on the adequate public policies setting and on a proper functioning of the judicial power. Faced with the feeling of impunity that irritates the population and leaves public powers in discredit, it is of vital importance to adequately articulate the police and the judicial power.

The reshaping of traditional ways of prevention, crime repression, police organization and investigative systems within the judicial phase is vital, as well as the relations between community and the judicial and police system. In the same way, it is important to make progress in achieving

<sup>417</sup> CELS, *Derechos Humanos en Argentina. Informe 2004*, Buenos Aires, 2005.

<sup>418</sup> *Idem*, p. 38.

<sup>419</sup> Sain M., *op. cit.*



criminal and security policies, giving under special attention the defense of the collective and individual rights of the inhabitants with regards to illegitimate, irregular, defective, abusive, arbitrary or negligent acts or omissions perpetrated by Security Forces.

*Please refer to proposals N 1 - 42, 190 - 203.*

# MEDIA

One of the most outstanding characteristics of contemporary societies is the importance of media in the shaping of practices and social representations. Therefore specialists refer to contemporary society as “Information Society”. In so doing, they underline the relation of power enjoyed by the control of new technologies, particularly regarding political, economical or cultural decisions.

Two main opinion trends have nurtured the debates that took place since mid XX century on the so-called “mass communication”, and that persist at present<sup>420</sup>. On the one hand, the studies of the *Mass Communication Research* have stressed the supposedly democratic effects and functions of information and culture brought about by new media that could be understood as factors that were to create balance, social harmony and development. On the other hand, members of the *Frankfurt School* have warned about what they considered to be the decay of creativity and complexity of culture in the hands of an industry that treated cultural goods and cultural symbolic messages in the same way in which they treated any other object of consumption; that is, in a stereotyped and homogenizing way, guided only by the aim of making profit out of it.

Discussion has deepened since the seventies’ studies on the property of large information and entertainment networks (generally, oligopolies from central countries) and on their capability of manipulating the creation of a “public opinion” convenient for their economic and ideological interests, along with the concentration of power it implies. The intense debates that took place in the so-called “Third World” fostered the claim before international organizations for the creation of a “New Informative Order”, which

<sup>420</sup> For a complete approach to the process, please refer to Umberto Eco, *Apocalípticos e integrados*, Lumen, Barcelona, 1990.

could lead – by the democratization of communication – to the listening of the voices of the most weak and of cultural diversities.

Therefore, as a response, in 1980 UNESCO assumed the challenge and approved the “McBride Report” – titled after the Irish, Sean MacBride who presided the commission – that proposed the construction of a New World Information and Communication Order, based on six central principles:

- To bring the unbalances and inequalities that characterize the situation in the subject of communication to an end;
- To eliminate the negative effects of private or public monopolies and of excessive concentration;
- To suppress internal and external obstacles for the free circulation of information and bring about a wider and more balanced broadcasting;
- To protect cultural identities and the right of every nation to a worldwide public opinion on their interests, aspirations and social and cultural values;
- To recognize the right of all people to participate in the international exchange of information based on equality, justice and mutual interest;
- To respect the right of publics, ethnic and social groups, and individuals to access to sources of information and to actively participate in the communication processes.

Among the Commission’s recommendations, it must be noted that *“for these purposes the comprehensive development of national communication policies regarding social, cultural and economical development objectives is of vital importance. Such policies should include wide consultations with every involved sector along with adequate mechanisms for the joint participation of the organized social groups in their definition and implementation”*<sup>421</sup>.

However, neoliberalism reoriented the debates towards “freedom of press” (mainly understood as enterprise freedom) and deregulation, pushed by large multimedia conglomerates that concentrate new information and communication technologies, and based upon “digital convergence”, that put down previously existing barriers among diverse media (radio, TV and written press) and sectors (communication, informatics and

<sup>421</sup> McBride S. (Ed), *Un solo mundo, voces múltiples. Comunicación e información en nuestro tiempo*, UNESCO, París, 1982.

mass communication). At present, WTO takes on the debates over information, culture or intellectual property, instead of UNESCO<sup>422</sup>.

In addition, the debates over the role of civil society and popular cultures regarding mass media messages have continued. Among the diverse positions, the next should be noted: those that consider that media deepens population dependency and alienation; those that sustain that underprivileged sectors re-signify and re-appropriate messages according to their personal symbolic backgrounds; and those that establish that media could make possible a more democratized and plural world. Finally, others consider "*media present function is to help society to turn into market*" as researcher Jesús Martín Barbero states<sup>423</sup>, or following García Canclini, to turn citizens into consumers.

Civil society, along with some governments that intend to regain their decision capacity, have not abandoned the struggle for the democratization of information and communication faced with the commercial transnationalization of media. This situation brings about a previous question: is communication another item within the marketplace or is it a human right? In December 2003, United Nations General Assembly decided to undertake an international meeting on Information Society, while preparing another one for November 2005. For these occasions social organization networks and national and alternative media are drafting some proposals tending to the shaping of societies where cultural, ethnic, regional and linguistic diversities are respected; where human rights and sustained development are central issues; and where foundations are found in transparency, diversity, participation, social and economical justice, gender equity and regional and cultural perspectives.

### **Freedom of expression and community media**

Under the belief that human rights are the cornerstone of democratic life and that the processes of consolidation of more fair, plural and less discriminative societies depend upon the exercise of the right of information and expression in all their diversity, it is imperious to remind our govern-

<sup>422</sup> Burch S., León O., Tamayo E., Se cayó el sistema. *Enredos de la Sociedad de la Información*, Ed. ALAI, Quito, 2004.

<sup>423</sup> Exposition in the Seminar on "Culture and Communication" held at the Advances Studies Center of the University of Córdoba (2002).

ments of the importance of the application of treaties and declarations on human rights.

Freedom of expression is recognized in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Inter-American Convention on Human Rights, Resolution 59(I) of the United Nations General Assembly, Resolution 104 adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO). All these agreements – amongst others – represent the legal and political framework to which States have agreed upon.

In the same way, the Santiago Declaration and Program of Action (UNESCO, 1992) emphasizes the role and importance of community media in the construction of citizenship. The meeting on “Challenges to Freedom of Expression in the new century” (2001) had already pronounced itself on broadcasting, pointing out that *“the utilization of traditional mass media is not always presented as an accessible way of communication of the needs and claims of the poorest or most vulnerable sectors of society. In this sense, community media have for a while been insisting on including strategies and contents addressing the needs of these communities in national agendas. The promotion of diversity is to be a primal objective in broadcasting regulations: diversity implies gender equality and equal access opportunities to all sectors of society to radio frequencies”*<sup>424</sup>.

In this sense, the Inter-American Commission report on human rights points out that *“due to the importance that these channels may have for the exercise of freedom of expression at community levels, the establishment of discriminatory frameworks that might obstacle the award of communitarian radio frequencies is not admissible. In the same way, neither are practices making use of unjustified closing threats or arbitrary confiscation of equipment – even those functioning within legality – admissible”*<sup>425</sup>.

### **Durban and Internet**

Durban Conference had already stated that *“world communications, thanks to the employment of new technologies and the increase of intercultural exchanges, through the preservation and promotion of cultural diversity may contribute to the eradication of racism, racial discrimination, xenophobia*

<sup>424</sup> For the complete text, please refer to <http://cidh.oas.org/relatoria/>.

<sup>425</sup> *Idem*.

*and connected forms of intolerance*". At the same time it pointed out that the states with possibilities of using the new technologies, even Internet for the creation of educational nets and for making people sensitive to all forms of discrimination, promote respect to human rights and cultural diversity while it underlies the importance of the making of concrete measures to give access to marginalized communities to media, being traditional and alternative, that could reflect their cultures and perspectives.

It also calls States and stimulates private sectors to elaborate a code of behavior by means of the association of professionals, avoiding any type of stereotypes – in particular false images of workers and migrants – based on racism, discrimination, xenophobia and related modes of intolerance. At the same time it refers to the creation of codes at a national and international level to control negative messages through Internet. It also fosters the use of Internet in an extensive form – taking into account difficulties of access that a good part of the population suffer – as a forum of struggle against racism and discrimination.

United Nations has asked for the making of a work commission – conformed by government representatives, private sector members, civil societies and multilateral organizations –. There is also, an implementation requiring the preparation of the second meeting of the World Summit on Information Societies. Civil society groups suggest the work to be done on the base of human rights and development. There is an almost unanimous discomfort amongst governments due to the fact that "the great majority of the countries have no voice in the way in which internet is administrated" because it belongs to an enterprise (ICANN) registered under the United States of North America Legislation.

### **An overview of media**

In written media, language becomes a great opinion creator and the principal symbolic mechanism on which different modes of discrimination are centered. Although written journalism tends to be more careful in the use of expressions it also locates them in a more permanent and supposedly "legitimate" way. The fact that the poor or the excluded people historically appear in police sections of newspapers is an example of this. In the same way, it is easy to find the existence of formulas regarding the allocation of people and issues within a determined hierarchy along the different sections that can be traced in the way in which they appear. Edition of mate-

rial according to the particular interests of the enterprises is a usual practice, although some efforts to extend the already established limits on behalf of particular journalists can be noted. On the other hand alternative written media that intend to express diversity find funding difficulties and scarce or none state support at all.

As Bourdieu put it, TV has imposed decisive transformations due to its commercial structure to journalism as a whole as well as to the cultural, political and social fields: *"TV pretends to be an instrument that reflects reality and ends up being an instrument of its making"*. The weight of economy (announcers) allows them to select both patterns and contents that match the interests of the most dominant sectors of society that invest on TV. A daily agenda is then "built" and diversity of opinions, voices and problems addressed that are to nurture democracy are jeopardized. Discrimination is unfolded not only in what can be seen – consumism, competence, an aesthetic model alien to the great majority of the population – but also in what is systematically being hidden: cultural, economical and social diversity.

Radio is the closest media to popular sectors around the world. Oral language is one of the oldest modes of human exchange, it does not require of determined levels of instruction, gives plenty of space to emotion, is felt as a company and can be listened to anywhere and while doing any duty. It is hence, the most adequate media to bring about voice to the groups and social sectors of society that are left behind or discriminated. Nevertheless, as the law of radio diffusion (law N 22.285) has not been derogated although sanctioned during the last military dictatorship (1976-1983), radio frequencies are generally given to private individuals or commercial firms in Argentina (article 45), hence denying it to other sort of organizations. The application of this law deepened during the nineties, and this opened the doors to the concentration of the media property turning them into oligopolies and hence limiting their democratization. Meanwhile, their strength is more dangerous when used to discriminate or seclude. We can for example note the way in which stigmatizing and aggressive chants from soccer fans are "filtered" by the TV screen.

In spite of their differences regarding structure and language, the main communication media share daily examples of discrimination towards diverse sectors and groups. For example:

**• Poor and/or excluded**

The old journalist tradition only makes them visible in police section pages and hence fosters the discriminatory image that relates secluded and poor people in the following way: poor-delinquent-marginal-dangerous. That stereotype is more often linked to childhood as threatening. They appear in a less usual way in the section of general information – related to solidarity adds regarding to expensive surgeries or specially hard conditions (a homeless family, elder people, etc.) – or under another stereotyping label as “pobrecitos” (poor kids) that are to be helped because they cannot, neither know how to leave such a condition. Structural causes of economical and social problems are rarely treated in the articles within a context of understanding and hence the “victim’s culpability” becomes an implicit connotation.

They usually appear in the national politics section as a group when becoming threats to the established order, when for example: under the new mode of the cutting of roads, burning of tires, throwing fences down, cutting traffic or being aggressive to police officers, etc. That is currently being applied on “piqueteros” that are frequently associated to danger, causing trouble, to be labeled as uncontrollable, threatening and never as with constructive attitudes. Culpabilization is connoted and contextualization remains absent. On the contrary, when demonstrations are done by members of middle class (people protesting due to their money bank money saving conditions, due to security, etc.) media usually refer to them as “peaceful demonstrations”.

**• Age**

Poverty is more often related to youth and to danger against citizens. There is an established relation between violence, delinquency, drug use, VIH AIDS and youth. Here again there is no provided contextual framework to the problem. An example can be traced in the “astonishment” before violence at schools, as if it was no related to preexistent modes of violence within society and families. They are generally considered as inimputable with the exception of crime, where they are considered more and more responsible and without attenuation due to socio-economic causes or deprivation of affection.

Media are building up an image of youth that openly discriminates their capabilities. Youngsters from lower classes are depicted as committing



felonies or sitting at the street corner “doing nothing”, belonging to violent groups, overcrowding police stations and jails being addicted to videogames or TV drinking in excess or using drugs, at street riots, bailantas (popular dancing places) or discos. If they are youngsters belonging to the middle or upper class, they are seen as obsessed with their image and consumption, as permanent objects of marketing or as “social models”. As a journalist that worked on the flood at the province of Santa Fe, the young people’s solidarity efforts are not underlined.

#### • **Indigenous**

Discrimination is here unfolded under the logic of an almost complete lack of visibility. They are only on the media when there is an important case, often related to the conflict of the property of lands and landowners or enterprises that try to remove them. Their ancestral rights are not even named as within the making of a context although recognized by several existent laws. They are habitually treated in a stereotyped manner as if they were not part of different ethnic groups different geography and particular historical processes.

Journalists interested in the subject state that people that direct sections are always leaving the subjects for a next opportunity for they generally consider their situations as “Páldas” (as a mixture of sad, without solution, and with no interest to the great majority). Recommendations of international organisms on the subjects are – generally – not divulged.

An important mode of discrimination is unfolded in radio media of the provinces in which there is a strong multilinguism. For example in Salta, seven different languages are talked but radio programs are done in Spanish. The same thing happens in other areas of Argentina.

#### • **Afrodescendants, gypsies and other ethnic groups**

Mass media cooperates in strengthening the national myth that states that “there are no black people in Argentina”, and hence invisibilises them as a social group with a strong historical and current presence, moreover, showing them as individual “cases” with exotic characteristics. Publicity, on the other hand, usually uses images of black men and women in reference to a stereotype of sexual attraction and hence crystallizes their condition.

The situation of the gypsies is even worst, discriminatory elements are there added, in reference to deeply set social prejudices that relates them

to robberies and lies. A denounce was recently made at INADI due to a soap opera that had gypsies related to this stigmatization.

We can state that in general, indigenous, afrodescendants, gypsies and other ethnic populations of Argentina suffer from a noticeable lack of visibility that seems to be related to subtle forms of institutionalized racism, and focus in not eroding the social imaginary that understands Argentina as composed by a White/European/Christian supposedly majority.

#### • Gender

Leading roles are mainly performed by men. The ones talking are too often men and there are only a few women that are allowed to speak their voice out in media. Derogatory modes used against the Madres de la Plaza de Mayo when referred to as “locas de la Plaza” during many years is an example of this. This also happens before conflict of strong social discontent regarding groups that demonstrate in the public sphere, such is the case of piqueteros: “people generally refer to a piqueteros (in a general masculine name) although the greatest majority of the members of those organizations are women”.

The *National Women Meetings* that are being held since some years ago and that are massively attended do not “appear” in press or radio and TV as significant events that deserve to be publicized but are solely alluded to in a partial and stigmatizing way when precise and “scandalous” events take place.

Language used to refer to women in situation of prostitution is habitually discriminating: a sort of “naturalized” identity, without any relation to the social context is used against them. Allusions to women in this situation are done in immediate association to the world of drugs, police corruption and AIDS. And the fact that they are the ones promoting the use of condoms in the face of the “clients that are the ones who do not want to use them” is kept in silence. The fact that these women are generally mothers supporting their children is never mentioned as if to be mother and sexual worker was against nature.

In the case of abuses or rape, the victim is always subtly suspected of being responsible: she walked down the street on her own in the night. She was wearing a miniskirt, she was awaiting next to a dump, she went into a car of an unknown person, in sum she “looked for it”.

Even murder cases are explained as passion crimes – she supposedly

had sex with the murderer or had a lover or was threatening him with divorce, etc. –, male conduct is then attenuated due to “violent emotion”. The same thing happens with home violence that is kept under the veil of “private life”, although denounces keep growing and the non denounced facts that take place under the rhythm of the unemployment and social crisis.

The specific “feminine” sections in media are, except exceptions, solely addressed to the machismo type: fashion, cooking, decoration, horoscope, tabloids gossip and “heart” counseling confirming the prejudice that states that those are the interests of women, although some eventually stand out within the world of men such as in the fields of science, politics and sports. Even when nowadays there are more women working out of their homes and that a growing percentage of women are head of the families (feminization of poverty), the discriminatory stereotypes retro aliment themselves.

It is within this framework that the body’s image becomes paradigmatic in terms of prejudice, discrimination and stigmatization, women are habitually seen as sexual objects and their bodies are considered as valuable as long as they are thin, white or tanned (not naturally black expect when dark skin is seen as an exotic or alien element) with blue eyes preferentially, smiling and tidily “produced” (a term that belongs to the world of publicity and that is currently used in daily life). The same retro alimentation takes place in spite of the real contexts that exist in a country in which the great majorities are “mestizas”, there is multi ethnicity and multi cultural with a wide variety of original nationalities within.

The large extent to which adolescents suffer anorexia and bulimia, the proliferation of aesthetic surgeries and the obsession with fashion does not then come as a surprise, for the media and publicity transmit – on a daily basis – the message that a body different to the idealized one and alien to the great majority of the Argentinean women is without value.

#### • Sexual orientation

Many of the discriminatory prejudices related to the world of women that live in poverty are shared by those who have a different sexual orientation to the one seen as “normal” (heterosexuality). Homosexuals and travesties are usually associated to prostitution, drug, violence and crimes of “passion”, whereas lesbians are almost “invisible”. The position of the Roman

Catholic Apostolic Church about them or scientific statements that tend to characterize them to problems, “sicknesses” and not to sexual orientation. There is a strong homophobic climate both in TV and radio, and jokes and mockery are usually practiced against homosexuals, lesbians and travesties in a large number of shows.

#### • Migrants

Migrants, particularly those coming from border countries, are in their great majority poor and come to Argentina seeking for work and better future conditions. They suffer from the same prejudices other excluded people experience only that in their case discrimination is strengthened by xenophobia and racism. They also usually appear individually in police sections, and their nationality is related to crime, messages such as “*three thieves were stopped during an assault; two were Peruvian*”. hence strengthening stigma by creating a relationship between their place of origin and the committed crime.

People of Latin American origin are named and strongly related to the commission of crimes even when their origin is not necessarily related to the subject and therefore – hard to dismantle – stereotypes are built. The same happens with people of African origin that are usually treated in a paternalist way and some times in “*notas de color*” with exotic edges. The conditions they suffered in the countries they left before coming here is never mentioned at as key for setting an accurate context to their situation.

It is important to note that the law on radio diffusion only contemplates the possibility of assigning licenses to Argentinean citizens and no spaces nor sections have been previewed for the diffusion of information on the different cultures that are part of our society, as if such was homogenous and with European-Western root. The stereotype that states that “we come from the boats” (connoting a supposed European origin) still works in reference to an hegemonic model.

#### • Disability

Their visibility has grown during the last years. According to journalists that include them in the sections they do so because they “sell well”. Nevertheless, priority is given to people with inborn diseases and not those that have acquired certain handicap due to age or labor accidents (that are in fact numerous), the paternalist tenor, underlying accomplishments

obtained due to individual efforts instead of calling for structural solutions (signs interpreters, architectonic barriers and transportation, integration of kids with special requirements to schools and common activities, etc.).

There are contradictory situations: on the one hand there is a group of journalists of different media that are working on a “guide of journalist style to inform about disabilities”, following the examples of Spain and Colombia whilst on the other “jokes” and mockery to people with any type of disability are very common in so called “humoristic” TV and radio shows.

#### • **Political-ideological**

Each media is aligned to a political ideological direction, that impregnates not only editorials but all the contents, creating an illusion of informative objectivity that is not so, for it is done under a certain selection. Manipulation of information is notorious and can be seen in the People that are consulted, in the chosen subjects and data, all of which guarantee a determined publishing position, that remains related to the corporate interests of the sector. For example: during the war in Iraq most of the media chose to repeat the motives given by the United States (existence of arms of massive destruction) without opening space and sources for other type of information. Another way of discriminating people, organizations, subjects and data can also be seen in the way in which people against globalization are labeled, this is as: “globalifóbicos” (phobic to globalization).

#### • **Religion**

In spite of the existence of diverse religions within the Argentinean society, some very rooted – related in depth to the phenomenon of the diversity of peoples that conform it and are still part of it –, media seem to usually be conformed with the sole version of the immense majority of militant catholic citizens. Any allusion to diversity of religion is seen as “other” different to the “norm” and hence understood as marginal and reduced to the status of “non-conventional”.

A subtle relation between old and new stereotypes is often seen and a marked anti-Semitism survives added to a strong Islam-phobia, etc. discriminatory practices regarding indigenous spirituality are presented as folk or are completely veiled. Recent tendency of some middle class sectors (mainly women and youngsters) to relate to oriental or shamanism religions in the seek of greater spirituality are easily associated to “hippie” of

past decades, as non-lasting fashions or related to drug use. New modes of religion of popular sectors are automatically seen as “sects”.

• **Buenos Aires and the country**

Discrimination against certain areas of the country is clearly noted in the media. The characterization “Capital-Interior” lacks balance. While “national” media reflects only what happens in Buenos Aires, The rest of the country appears whenever there is a natural disaster (floods, storms etc.) or when there are relevant “cases” that can raise sells (abuses, multiple rapes, kids that shoot their classmates at school, etc.). Limited scoped researches sometimes appear about certain areas or articles related to tourism (addressed the inhabitants of the capital city of Argentina) whilst the reality lived in the provinces is completely unnoticed. This is in direct relation to the fact that the great majority of the buyers of “national” journals and magazines as well as the main TV advertisers inhabit in Buenos Aires. This hence confirms that these media work as any other commercial enterprise seeking profit and not assuming a central role as information vehicles. This is specially serious in regard of those isolated areas of the country because their “invisibility” deepens their isolation and poverty.

• **Sports: A window to discrimination**

The social and cultural matrices of discrimination are expressed here in a more visible way. Sports generate passion mechanisms and have strong hold on population – specially masculine population –. At the same time, the media – and the market that supports them – strengthens these holds and amplifies them. It is notable that the “songs” of the soccer fans – that the media (specially radio and TV) permissively filter – hold different types of discriminatory elements. In this way of old components (in the ‘60s, “judíos judíos al agua del río”) new and very violent and denigrating ones related mainly to Bolivian and Peruvian immigrants that arrived to Argentina during the eighties and nineties, are added (in coincidence with a period of time very high levels of discrimination against them as they were placed as unemployment expiatory goats). Other subjects that are habitually discriminated and that are target of songs with highly prejudiced tones, are also added (“son todos negros, son todos putos”). According to journalists specialized in the subject a transformation took place turning into enemies today those that before were considered as opponents in the past. Triumphs

are celebrated as well as the others "failure" becomes subject of celebration, in that way aggression and violence keeps growing. Atavist nationalism, that puts on the other the sum of all decalcifications has also grown (newspaper's covers titled some time ago the arrival of a Brazilian team as "se vienen los macacos!").

It is not by chance then that this exacerbated speech is associated to the consolidation of the "barras bravas" as a central node of soccer fans in the '80s and '90s as a very violent and organized violent gang financed by business men and politicians. A logic that can be related to fascism, where the use of force (related to manhood) is central as a positive value (swastika crosses were seen in soccer stadiums of Great Buenos Aires).

The media, as member of the market, seeks profit and hence, discriminates some sports (that do not "appear" or if they do they do so with less frequency) while focusing on those that "sell more". For example: A skating woman will have little space in the section, whilst for example polo has generated its own market amongst a social sector of high consuming power (that invest in publicity) and hence has a growing space in media. The Sport's show is central in a world that tends to be more and more "spectacularized".

The silence that covered the detention and disappearance of sports people during the last military dictatorship (1976-1983) is also worth noting. That silence remained during the years of democracy (with the exception of a single case). Finally, the Paralympic games that are addressed to sports people with different disabilities generates little space in the media.

#### • Internet

As the Conference of Durban quotes, the new modes of communication have a double character. On the one hand they are places in which stereotypes and stigmatizing messages against different sectors are emitted (video games are attested with examples of this) and are hence imperious to control as much as possible. On the other, it is also important to take advantage of the use of the potentialities of this new media for the adequate visibilization of sectors and collectives that are discriminated in the country, facilitating their access to it and at the same time the adequate training in the subject (with the adequate technology, in the different areas) for the articulation with their fellowmen at a local, regional and international level.

*Please refer to proposals N 1 - 42, 204 - 218.*

# HEALTH

Modifications in collective health conditions – such as, drinking water, drainage and urban systems of cleaning, etc. – and the improvement of life conditions (feeding, education, housing) are preventive factors that mostly impact in morbidity and mortality rates of the population. However, medical care is the one that appears before most members of society as the fundamental agent of these transformations.

This conception that assigns to medical knowledge primacy over other factors was characterized by anthropologist Eduardo Menéndez as “Hegemonic Medical Model”. He describes it as the “*set of practices, knowledges and theories generated by the development of what is known as scientific medicine, which since the end of the XVIII century has been able to subdue the set of practices, knowledges and theoretical ideologies until then dominant in social sets, thus getting to identify itself as the only form of attending to disease that is legitimized by scientific criteria and the State*”<sup>426</sup>.

In Argentina, institutionalized medical formation has only marginally incorporated the incidence of socioeconomic dynamics in the training programs, hence tending to a “naturalization” of certain variables that lead to reproducing many conditions of the social system in which they operate. Biologism is its main characteristic, for it is seen as a factor that guarantees the model’s scientism in a hierarchy that locates it over other explanatory notions. Disease is understood – in medical practice – as a natural and

<sup>426</sup> Structural features are “*biologism, individualism, a-historicism, a-socialization, mercantilism, pragmatic efficiency, asymmetry, authoritarianism, subordinated and passive patient’s participation, exclusion of the consumer’s knowledge, juridical legitimization, formalized professionalism, identification with scientific rationality, inductive tendencies towards medical consuming*”. Menéndez E., “Modelo Médico Hegemónico, crisis socioeconómica y estrategias de acción del sector salud” en Cuadernos Médico Sociales, N° 33, Rosario, 1985.



biological fact rather than a social and historical one. The economic, social, cultural, psychological and environmental processes occupy a contextual background not only in clinical practices but also in epidemiological studies that work with historical series of short duration and fundamentally biological variables as sex and age.

Diverse practices in the scope of health currently exist in Argentina holding an ample and unequal acceptance and diffusion. As a parallel to official professional medicine there is the so-called “popular medicine” – that combines diverse principles rooted in the knowledge developed by aboriginal cultures, Hispanic-colonial and migrant population elements – and “alternative medicines” (acupuncture, homeopathy, etc)<sup>427</sup>.

Acknowledgment of these “non-conventional” medical practices is to a great extent related to the search of therapeutic alternatives facing a highly technified system of complicated understanding, expensive and often of difficult access for patients. Therefore, the symbolic struggle between hegemonic practices and subordinate ones occurs within a society in which the State must fulfill a non-transferable role. As it will be pointed out, in Argentina, the State’s retreat from the planning and control functions ended in an advance of the “market”<sup>428</sup> and a systematic adoption of “emergency solutions” in which the repairing dimension is prioritized over integral health care.

World Health Organisation (WHO) defined health – in its 1948 Constitution – as “*a state of physical, mental and social well-being, and not only the absence of affections or diseases*”. This conception is ratified in the Conference of Alma Ata of 1978 with the adoption of the concept of “Primary Health Care”, that establishes health as a human right and that is to prioritise the fight against the causes of the diseases in life and working places of population.

Primary Health Care includes at least: education on the main sanitary

<sup>427</sup> Since mid XIX century there are references on disputes between these different medical practices: “*The scientific medical practice as a way of living is impossible in the country as there is always a Mr. or a Mrs. handing in prescriptions, (...) word healers and witchcraft and an infinity of fans of all these heretic modes of healing, that is homeopathy, Leroy or Giles medicine...*”. Report by A. Michaut (1888) quoted by Guerrino A., *La medicina en la conquista del desierto*, Círculo militar, Buenos Aires, 1984.

<sup>428</sup> The debate over the patenting of the Human Genome by the enterprise PE Celera Genomics as well as the world efforts to accelerate research with the purpose of declaring the results as “humanity goods” are here to be taken into account.

problems, preventive methods and the ways to control and eradicate them; promotion of food provision and correct nutrition; adequate provision of potable water and basic sanitary conditions; maternal and childhood assistance, including family planning; immunization against main infectious diseases; prevention and control of local endemic diseases; proper treatment of common diseases and traumatism; and provision of essential medicines. Nevertheless, the content of the Declaration was often misunderstood as a type of marginal and low budget attention for the poor<sup>429</sup>.

In this sense, one of the main characteristics of this perspective – supported and referred to in Declarations, Covenants and World Conferences<sup>430</sup> – is that, being health a human right, it is on the political decision of the State where the responsibility of its integral care lies.

### **Current sanitary system**

As it has been stated, conditions and environmental life and working conditions are the main causes of disease of wide population sectors. Our health system reinforces the situation of existing inequality, offering smaller access to prevention and healing practices for the 17 million people that survive in poverty and for the 6.5 million that do it in indigence. Health indicators clearly show this when reproducing in parallel basic parameters inequalities such as, infantile mortality, life expectancy or the possibility of becoming ill or dying of tuberculosis or AIDS.

Health care is in our country structured in three subsections: State, Social Security and Private. These interact in the macro-system, but function as three independent systems that respond to their own logics in which State and market intervene to different extents. This causes heterogeneity and fragmentation, with an unequal allocation of resources and strong differences at territorial and sectarian level, that actually imply an important care deficiency for great sectors of the population.

The State subsection – with national, provincial and municipal dependencies – represents the only health care provision for 48% of the population

<sup>429</sup> Tejada de Rivero D., “Alma-Ata, 25 años después” en *Perspectivas de Salud*, Vol. 8, N° 2, OPS, Washington, 2003.

<sup>430</sup> Universal Declaration on Human Rights (art. 25), International Covenant on Economic, Social and Cultural Rights (art. 12) and its additional protocol (art. 9-12), Americas Regional Conference (paragraph 6) and World Conference on Racism (Paragraph 110, b).

(56% in the age group of 0 to 30 years), whilst jumping to over 60% of the populations in provinces such as Chaco, Chubut, Formosa, Santiago of del Estero and Salta<sup>431</sup>. The latter rates coincide with the lowest rates of physicians per inhabitant (Chaco, Chubut, Formosa, Misiones and Santiago del Estero) and with highest of infantile under-nourishment (Corrientes, Chaco, Formosa, Misiones and Tucumán). Due to the intense impoverishment of the Argentine population in the last decades it is this subsection the one that is currently providing attention for a great part of the sectors that were previously under the scope of the Social Security System.

In addition, Argentina is one of the Latin American countries that during the nineties adopted the reform of the health sector fostered by multilateral credit organizations (World Bank, Inter-American Development Bank, International Monetary Fund). The reform was hence based on neoliberal principles (diminishment of public expenditures, opening to transnational capitals and reformulation of the State in favor of privatization). This gradually installed reform – silent and steadily – deepened the transformation from *health as right* (that was the spirit of the WHO conceptions) to *health as merchandise*, whilst also fragmenting the visualization of these changes as a whole.<sup>432</sup>

In this sense, the adjustment policies of the public health sector dismantled many establishments and benefits that are the only possible service for ample majorities of our society. On the other hand, the propositional framework of the nineties reform on “auto-managed hospitals” (*hospitales de autogestión*) implied self-financing of the establishments (it is intended to replace the reduction or non-increase of public funding with the charging of the provisions for Social Security and Prepaid Medical Companies), establishing new access barriers by means of the implementation of compulsive recollections of “contributions” in hospitals, health centers and peripheral health care dispensaries, forcing many to self-exclude themselves from the attention.

<sup>431</sup> Source: INDEC, 2001.

<sup>432</sup> Laurell A. C., “La salud. De derecho social a mercancía” in *Nuevas tendencias y alternativas en el sector salud*, Universidad autónoma Metropolitana, México, 1995; Merhy E., Waitzkin H. and Iriart C., *Managed care, Alternativas de gestao en saúde*, Editorial Prohasa, Fundação Gentulio Vargas, Sao Paulo, 1998; Stocker K., Waitzkin and Iriart C., “The exportation of managed care to Latin America” in *New England Journal Medical*, 1999.

Another one of the manifestations of these changes was the introduction within Social Security of financial groups that are presented as *managers*<sup>433</sup> (private administration funds) to ameliorate the system's "crisis"<sup>434</sup>. These groups enter national and provincial Social Security services – as well as Union services – based in profit motivations, gaining between 20% and 25% of the total expenditure and limiting the benefits for the beneficiaries (that is to say, restricting all those practices that are outside the Obligatory Medical Program), whilst not allowing an important amount of necessary diagnosis practices and only partially recognizing pathologies that include expensive treatments<sup>435</sup>. These same groups intend to settle in the State subsection through the provincial health insurance and by the provision of specific services (invoicing, computerization, etc.)<sup>436</sup>.

The Pan-American Health Organization has indicated that from the beginning of the Plan of Monetary Convertibility of 1991, the "*public goods such as health, education and social prevision, whose provision and regulation had historically been in charge of the State, lost operative effectiveness, efficiency and distributive fairness; and also coverage was reduced and quality of services has decreased*".<sup>437</sup>

Regarding discrimination, it is a high-priority to emphasize the analysis in the State subsection for it receives the primary health care demands of most of the population of the country and depends on the decisions of the National Ministry of Health and Environment and the provincial and

<sup>433</sup> For a regional analysis on the process of these sub-sectors see Iriat C., Merhy E. and Waitzkin H., *La atención Gerenciada en América Latina. Su papel en la reforma de los sistemas de salud*, Instituto de Estudios y Formación - CTA, Buenos Aires, 1999.

<sup>434</sup> The Health Services Superintendence has publicized in 2000 Social Security's deficit on behalf of providers (\$ 3.500 millions) without mentioning that the State indebtment was over that amount, and hence was one of the main causes of the deficit. The decrease in the number of beneficiaries – due to the deindustrialisation provoked in the nineties – is also to be added.

<sup>435</sup> As frequently denounced by HIV carriers, patients with hepatitis B / C, multiple sclerosis unconventional tumors, insulin-dependents, etc. Interviews in Buenos Aires and Córdoba, 2004.

<sup>436</sup> In 2004, the Health Social Forum delivered a statement – signed, among others by Adolfo Pérez Esquivel – stating that the Federal Health Plan (proposed by the National Ministry of Health and Environment) "does not establish health as a universal right" and "insists on the focused insurance and basic policies promoted by the World Bank during the 90".

<sup>437</sup> OPS, *Las condiciones de salud en las Americas*, 1994.

municipal dependencies. Some the most important problems detected of the current model are the following:

*Visible inequality in the municipal, provincial and national access*

This is reflected in the health condition of the population and in the allocation of the resources. According to official data, infantile mortality is three times greater in provinces like Corrientes, Formosa and Jujuy than in the city of Buenos Aires. Maternal mortality in Chaco and Jujuy surpasses in 500% the one of Neuquén. The same differences are to be noted in the assigned budgets, amount of beds by inhabitant, sanitary personnel, technology, provision of medicines, etc.<sup>438</sup>

*Regressive increase of the trend of the morbidity and mortality indicators*

In 2002, the rate of infantile mortality (under one year) raised from 16.3 to 16.8 per thousand as a result of the economic crisis that Argentina has been undergoing<sup>439</sup>. In this sense, Argentina is underneath – in a comparative scale – other American countries (some with greater rates of poverty)<sup>440</sup>.

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Canada	5 per thousand
Chile	8,9 per thousand
Costa Rica	11,2 per thousand
Cuba	6,5 per thousand
USA	7 per thousand
Uruguay	13,5 per thousand

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In addition, the numbers within the country also have a differential distribution according to poverty conditions in the different regions:

<sup>438</sup> Source: Estadísticas Vitales, Ministry of Health and Environment, 2003.

<sup>439</sup> A slight amelioration (16.5 per thousand) started in 2003, reaching 15 per thousand in 2004. Source: *Clarín*, 7 de abril de 2005.

<sup>440</sup> Source: Ministry of Health and Environment and UNICEF, 2003.

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Chaco	26,7 per thousand
Formosa	25,5 per thousand
Santiago del Estero	24 per thousand *
Corrientes	23,8 per thousand
Tucumán	21,3 per thousand
Buenos Aires (Province)	15,8 per thousand
Neuquén	11,7 per thousand
Buenos Aires (City)	10 per thousand

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Among the children under the age of one, 70% died due to avoidable causes, such as: inadequate attention of pregnancy and childbirth; low weight when being born; insufficient maternal nursing; bad nutrition conditions; respiratory, infectious and parasitic diseases; lack of networks of familiar and social support; lack of access to health services<sup>441</sup>.

Amongst the children in poverty/social exclusion situations who survive beyond the age of one, pediatrics have detected a form of chronic undernourishment that is expressed in problems of retardation of growth and development with serious consequences for their integration in the educative process. Although only partially monitored, the nutritional state of the population indicates, according to data of the Ministry of Health in 1995, that the difference in height affects 11% of the Argentine children<sup>442</sup>.

The vulnerable period of the central nervous system extends from the last months of pregnancy to the first two years of life. Undernourishment in the pre and post-birth period plays a central role in infantile development, in addition to other poverty related factors (lack of sanitary control, exposition to toxic agents, complications at the time of the birth, etc.) that cause alterations in the neurological development. The correlation between cognitive poverty and capacities has been demonstrated, showing that significant differences in the intellectual coefficient and the learning capacity is present in children with basic unsatisfied needs (NBI)<sup>443</sup>.

\* It is estimated by specialists that there might have existed under-registrations prior to the provincial intervention in Santiago del Estero for it stated a rate of 12.4%. Similar situations may occur in Chaco and Formosa.

<sup>441</sup> Source: Sociedad Argentina de Pediatría. For further information see [www.sap.org.ar](http://www.sap.org.ar).

<sup>442</sup> *Idem*.

<sup>443</sup> Please refer to the study by the Applied Neurobiology Unit (CEMIC - CONICET) on

*Devaluation of Primary Health Care. Sanitary model aiming at healing disease and not prevention.*

The implementation of Primary Health Care does not take place within the scope of its authentic framework – as the more scientific and technically suitable way to reach the widest population zones, giving fundamental importance to the factors that cause diseases where population works and lives – but is understood as a devalued mean to take care of people living in poverty or as the first step of accessing the healing system, turning it into “Primitive Health Care”<sup>444</sup>.

Therefore, available resources are used for disease healing practices, what is much more expensive and irrational, and the expenses referred to pharmaceutical and technology production are prioritized (what has been called the “Medical Industrial Complex”) instead of the intensive labor of health personnel, which is what populations mostly need.

*Absence of a rational policy of pharmaceutical planning, control and supply*

As an outcome of accumulated human knowledge throughout time, medicines have acquired a mythical category. During the last decades this situation led to the “medicalization” of life hence not taking into account other traditional prescriptions and therapies, and not acknowledging the existence of numerous epidemiological studies that show that better results for health problems are to be found in, for example, the change of habits. The use of medicines is related to deep aspects of human beings (life/death) and its industry is thereof the most powerful in the world due to its globalized imposition: the “pharmaceutical culture” is very much alike in most of the countries. Nevertheless, the role of the State varies: some unfold rational policies (playing a strong regulatory role), whilst others apply “free market” policies.

In 1977, WHO determined the amount of useful medicines to be of 250: these were in general monodrugs (not combined). They are the so-called Essential Medicines, those of proven effectiveness that take care of the main health problems of the population and that bring about benefits that are

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poverty and cognitive capabilities and the research on marginalized urban areas surrounding La Plata city (Di Dorio et al., “Desarrollo psicológico, nutrición y pobreza” in *Arch Arg Pediatr*, Vol. 96, 1998).

<sup>444</sup> As Dr. Mario Testa titled it in *Pensar en salud*, Lugar Editorial, Buenos Aires, 1999.

larger than their risk profile. Every two years WHO experts update the listing<sup>445</sup>; the 2003 one including 316 medicines and 12 antiretrovirals (for the case of new pathologies, as is the case of AIDS)<sup>446</sup>, which demonstrates that the real new contributions have been few. The world's most advanced health systems, as those of the Nordic countries, do not have many more than 400 active principles. Argentina has near 4,000 medicines in market (between drugs and combinations), most of them are medicines of non-verified effectiveness, of doubtful effectiveness, irrational drug combinations, more expensive yet similar to the already existing ones for the same pathologies, and even with unacceptable risk profiles<sup>447</sup>. Its use implies a 30% of the total cost in health, even though WHO states that it shall not surpass 15%.

The structure of this market in Argentina – irrational and expensive – has the present situation as a consequence: partial public services coverage for medicines, often non-existent and of very unequal distribution.

The policy of “Generic Name Prescription”, developed by the National Ministry of Health and Environment, although an advance, has proved to be insufficient in producing an important lowering in the cost of medicines and in guaranteeing their quality. In this sense, the sanction of a National Generic Medicine Law (bioequivalent to originals and not paying licenses) is necessary.

### *Irrational and indiscriminate use of the medical devices*

Both in ambulatory care and internment, the cost of medical devices occupy the second place in importance<sup>448</sup>. The lack of attention to the international norms on the subject (amount of devices by inhabitant, among others), the primacy of a criteria oriented to profit and the lack of planning, promote over-provision and unnecessary raise of costs. This process has its origin in the policies unfolded during the 1976-1983 Dictatorship where

<sup>445</sup> Interview with Dr. Gianni Tognoni (WHO permanent consultant and collaborator in the Essential Medicines Listing) in Buenos Aires, 2004.

<sup>446</sup> For further information please refer to <http://www.who.int/medicines/>.

<sup>447</sup> Interview with the Argentine Group for the Rational Medicine Use (GAPURMED, composed by pharmacology professors from National Universities, joined in international networks) in Buenos Aires, 2004.

<sup>448</sup> Please refer to the 1997 and onwards Projective Diagnosis of Córdoba's Province Social Security Organization (IPAM, with 500,000 affiliates), corroborated by the Confederations of Provincial Social Security Organizations of the Argentine Republic (COSSPRA).



with successive customs exemptions the unrestricted entrance of technology to the private sector was facilitated, eliminating all rational State controls. However, since the democratic return the problem has not yet been revised according to what is needed.

#### *Increasing deterioration of public establishments*

Hospitals are overflowed since demands have surpassed all historical records. This overflow has as consequence the visibilization of the marked deterioration in which most of the State sub-sector dependencies are: new impoverished sectors that lost their health care coverage (according to the last national census the population without health care went from 36.9% in 1991 to 48.1% in 2001) along with those are that still benefit from it but cannot take on additional charges (such as coinsurance and other payments) turn towards public establishments. The absence of a reference system; the decentralization of the system towards the provinces and their parallel defunding, the little and deficient allocation of resources also impact on the public establishments situation.

A report by Doctors of the World, elaborated in 2002 after visiting 18 hospitals in different points of the country, indicates that vaccine provision was insufficient in 70% of them and a third part had closed due to the lack of resources in areas as neonatology, surgery rooms and intensive therapy. Moreover they indicate that a critical reduction of resources took place, and surgeries were 60 to 90 days delayed, food amount and quality descended, and medicines<sup>449</sup> were not handed in to primary care centers. A description on the deterioration suffered by the health care centers in our country is to be found in the following statement: *"the infrastructure was generally deficitarian and, in some sectors, terrible; the infrastructure showed insolently its deterioration and legitimate claims for improvements, were constant"*<sup>450</sup>.

#### *Increase of pathologies related to the use of agrochemicals in rural populations and in cities' peripheries*

An exponential increase of the rates of incidence of all diseases related to the impact of toxic elements on the immune system (oncological, self-

<sup>449</sup> See [www.mdm.org.ar/informes.docs](http://www.mdm.org.ar/informes.docs)

<sup>450</sup> Katz I., *Argentina hospital: El rostro oscuro de la salud*, Buenos Aires, Edhasa, 2004, p. 35.

immune, etc.) and on the environment is noted among agricultural producers and in the outskirts of the cities. The increase in the use of synthetic agrochemicals in Argentina – in farming as well as in urban industries – has no correspondence with circulating information and legal control. Nowadays statistics for a diagnosis on the magnitude of the problem does not exist. Nevertheless, it is possible to mention the detection of organochlorine plague-killers in the Rio de la Plata's sediments and also the presence of traces of the same type in maternal milk, water tanks, fruits and vegetables<sup>451</sup>. The speed with which the products are taken up by the market is faster than the time required by protective and sanitary, environmental and legal mechanisms to adapt to it. In addition, traces of plague-killers and pesticides are not neutralized, since there is a lack of resources for their elimination and final disposition.

Rural population undergo the greater exposition to agrochemicals because most of them lack elements and minimum conditions for product handling. In addition to the noticeable difficulty in the access to health services and proper housing, the low qualification on risks, the precarious equipment and security elements, and due to the frequent intervention of women and children in the rural tasks. The control of commercialization and use of agrochemicals at urban level is very difficult given the records atomization, the chronic difficulty in the control, the inadequacies of the effective normative on the use of industrial agrochemicals and the deficiency of information for domestic use.

This set of problems affect most of the population in Argentina. In the first place it stands out that the present formulation of the health system results in the impossibility of guaranteeing adequate access to benefits health care. Whereas, the sanitary policy is characterized by an increasing inequality both in the possibility of coverage of the total population and in the access to integral health care. Finally, the lack of State planning, regulation and control brings about an *incapacity to assign resources addressed to medical care in an effective way*.

The conception of health has been transformed during the last decades:

<sup>451</sup> It is worth to note that the proved consequences of exposition to agrochemicals has shown cases of neurological, endocrinal and immunological alterations and also important behavior alterations. See, in particular, [www.msal.gov.ar/htm/site/pdf/gestion-Cap3.pdf](http://www.msal.gov.ar/htm/site/pdf/gestion-Cap3.pdf). Also refer to Olea et al., "Clinical and biochemical changes in greenhouses sprayers chronically exposed to pesticides" in *Hum Exp Toxicol*, N° 15 (957-963), 1996.

health no longer holds the character of a universal right for which the State is responsible and hence has become a “merchandise” that individuals must acquire according to their economic possibilities.

### Overlapped discriminations

The depicted situation is particularly serious for the majority in situation of poverty or indigence, and implies a basic discrimination in health access. The difficulty of the State to provide universal health care coverage is to be added in those populations to the lack of basic life conditions, that are “structural remedies” against diseases: working, feeding, education, etc.<sup>452</sup> The required organic defenses, that are weakened by undernourished or in other situations of immunodeficiency, are absolutely more essential for health than any medicine.

In this sense, access to health care on behalf of people living in poverty has reached a point of absolute inequality: in all the regions, except Patagonia, the poorest homes spend more in health – like relative percentage of their income – than the richest. In average, the poorest fifth spends 9.4% of their income in health whereas the richest fifth spends only 5.2% (amount fundamentally linked to the purchasing of medicines)<sup>453</sup>.

Specific discrimination towards people living in poverty is experienced in health care, being the “*poor credential*” a good example of a differentiated and stigmatizing health care provision. Researcher Cristina Laurell indicates that this is a way to replace the universal right of access to health with a selective and merchandised access that incorporates public hospitals to the market: “*if a person has a credential by which he receives a limited number of benefits, since these have a cost, that person knows that he can barely aspire to it and therefore no longer considers health as an elementary right as life is. (...) The problem is the mercantilization of the notion and not the private nature of it, because if the State controls, regulates, has presence it guarantees the population’s health; however, when one seeks ‘common sense’ to believe that each repairing act belongs to the market, then mercantile criterion is being incorporated and hence that is the problem*”<sup>454</sup>.

Discrimination in health care access – derived from the characteristics

<sup>452</sup> Please refer to *Transversal Axis Poverty and Social Exclusion*.

<sup>453</sup> Maceira et al., *Reporte del Banco Mundial AR 26-144*, 2003.

<sup>454</sup> Laurell C., *La salud, de derecho social a mercancía*, Fundación Friedrich Ebert, México, 1995.

of the sanitary system and the situation of poverty and social exclusion – is added to specific discriminations in the medical care, hence worsening and harnessing in many cases the vulnerability of those socially discriminated groups on the basis of mechanisms analyzed separately. In these situations, prejudices operate in such a way that they bring about discriminatory institutional treatment.

- **Children and adolescents in street situation, elder adults.** The situations with poor or indigent children and young people are dominated by prejudice. Moreover, they are associated to drug use, HIV/AIDS, etc., and are therefore treated with evident rejection and in a discriminatory way: *“they keep you drugged all day long at the hospital”*<sup>455</sup>.

On the other hand, elder adults are usually exposed to inadequate conditions, proceedings and delays, and are frequently restricted from specific treatments due to budget problems of State Elder Health Security System. In addition, they are *“usually over-medicated for calming them down, even though many of their affections could be solved by more natural means, such as social activity, long walks, strolls, entertainment, etc. It is a great pharmaceutical captive market”*<sup>456</sup>.

- **Aboriginal People.** Discrimination is to be added, as they repeatedly denounce, to the poverty, indigence and isolation situations in which members of aboriginal peoples of different areas of the country live. They indicate that they often feel as victims of an inadequate treatment on behalf of hospital personnel: *“they always leave us until the end. Women arrive at 6 in the morning with their kids and spend almost a complete day sitting in corridors (...) whilst some people receive immediate attention”*<sup>457</sup>. In most cases, they do not receive the medicines provided by the Ministry of Health and they cannot buy them: *“We wait all day long and when our turn arrives, they simply ask what is wrong without examinations and prescribing medicines... but, what do we do with the prescription?”*<sup>458</sup>.

In Argentina, there are no cultural mediators for integrative intervention of people from different ethnic groups into health care, taking under

<sup>455</sup> Interview in Mendoza, 2004.

<sup>456</sup> Interview in Córdoba, 2004.

<sup>457</sup> Interview in Salta, 2004.

<sup>458</sup> Interview in Salta, 2004.

consideration their language (in several Argentine provinces indigenous languages predominate regardless of what none bilingual personnel is to be found at the hospitals), values and habits (for instance, vertical child-birth). Moreover, only in few cases the interchange between official medicine and traditional medical practices is stimulated.

• **African, afrodescendents, gypsies and other ethnic groups.** As in the case of the indigenous population, the non-existence of linguistic and cultural mediators in health services brings along permanent rejection and delays in the care for these ethnic groups by sanitary professionals.

Afrodescendent population describe discriminatory problems in hospitals: *"they leave us for the end, we receive poor treatments, jokes and paternalism"*<sup>459</sup>. They also indicate that, as epidemiological studies do not incorporate ethnic variables, diseases of greater prevalence for the group cannot be prevented. Gypsies and Asians denounce very similar situations that make them not to concur to health care services and often to arrive at the consultation in conditions that are difficult to revert.

• **Women.** The most frequent denounce of discriminatory and offensive treatment to women in the scope of health care is related to the lack of guarantees for their complete development and to the pretension to restrict their identity to maternity, *"condemning, moral and legally, all those conducts and attitudes that question the reproductive mandate"*<sup>460</sup>.

Three WHO recommendations – referred to childbirth treatments (vertical position, no imposition of episiotomy and epidural anesthesia – are neither respected nor informed in most of the country's health centers: *"Bolivian women give birth in a squatted positioning and their customs are not accepted in our environment"*<sup>461</sup>. There are even many cases in which support during childbirth is prohibited by health personnel.

In reference to sexual health and birth control, the national application of law N 25.673 on Sexual Health and Responsible Procreation – that foresees the establishment of a system for the early detection of sexually trans-

<sup>459</sup> Interview in Buenos Aires, 2004.

<sup>460</sup> Diffusion material of the Latin-American and Caribbean Committee on the Defense of Women Rights (CLADEM) within the framework of the Campaign for the Convention for Defense of Sexual and Reproductive Rights.

<sup>461</sup> Interview in Rio Negro, 2004.

mitted diseases, HIV/AIDS and genital and mammary cancer as well as the informed prescription and provision of non-abortive and transitory contraceptive methods and elements – has been inadequately, discretionary and unsystematically applied.

In this sense, it is worth noting that the National Ministry of Health of estimates that around half a million abortions are practiced a year in Argentina<sup>462</sup>. These declarations reinforce the data on the high percentage of deaths of women due to septic abortions<sup>463</sup>, done without the suitable sanitary conditions: “*they are treated like people that deserve punishment even by doctors or nurses: there is a true discriminatory matrix on the matter*”<sup>464</sup>.

The situations of domestic violence and violations is also denounced as discriminatory, being for the improper treatment given to women in this situation in hospitals or for the delay in the allocation of turns and the shortage of specialized professionals to offer the suitable support.

Finally, in the cases of women in prostitution situations, a number of denunciations for offensive and degrading treatment in hospitals and centers of health were received<sup>465</sup>.

- **People with diverse sexual orientation and gender identity.** In the case of the Gay, Lesbian, Transvesty, Transsexual and Bisexual Community (GLTTBI), discriminatory treatment is usually displayed as a refusal to provide medical care in absence of negative HIV examinations. Also, many groups indicate that neither the public nor the private health care system recognizes bonds between partners of the same sex, thus affecting access to medical coverage and therapeutic support<sup>466</sup>.

- **Migrants.** Similar situations to the ones suffered by aboriginals and other groups (absence of mediators, poor treatments, etc.) are denounced by groups of people coming from Latin American, Asian and European (main-

<sup>462</sup> Source: *Clarín*, November 12, 2004.

<sup>463</sup> Estimated numbers for 1999 to 2003 show that maternal deaths due to abortion represent a 30% of the most frequent reasons being Formosa, Jujuy, La Rioja and Santa Cruz the provinces in which a higher incidence has been noted. Source: INDEC and National Ministry of Health and Environment.

<sup>464</sup> Interview in Córdoba, 2004.

<sup>465</sup> Please refer to the *Gender* chapter.

<sup>466</sup> Please refer to the *Sexual Identity* chapter.

ly eastern) countries. Even so, the irregularity of the migratory situation of a great number of people deepens their vulnerability, since the lack of appropriate documentation implies that thus only benefit from urgent health care provisions.

Another form of discrimination towards these groups is based on the existence of regulations that stipulate the need for taking medical examinations by those people who are formalizing proceedings: among them, disposition of article 9° of law N 23798 on AIDS.

• **People with special requirements.** Specialized centers and professionals are insufficient for the proper care of the population that requires these benefits whilst the geographic distribution is limited<sup>467</sup>. Sanitary establishments are not properly adapted for the attention of this population: they lack sign language interpreters, mediators when required by patients and their relatives, and building structures have not been properly adapted. Mentally handicapped people receive a very inadequate public internment regarding personnel and structure.

• **People living with HIV/AIDS.** Even though there is a national access policy to essential medicines for the treatment of this disease (antiretrovirals, etc.), there are permanent denunciations of this group on the discriminatory and humiliating treatment towards them on behalf of health personnel. This situation evidences a lack of preparation of the personnel (who fearing infection avoids all forms of direct bonding), the lack of adequate biosafety measures and devices in health establishments, and the lack of minimum support and advise structures for infected people and relatives. It has also been verified that many Social Security and Prepaid Organizations diminish or deny benefits to infected patients, deriving them to public establishments.

Regarding the issue of data confidentiality, many denounces were taken regarding the breach of article 2 of law N 23.798 in the sense of briefing the serological condition within a codified way: "*in laboratory orders and billing papers a great signboard is attached stating 'HIV+', thus all the hospital knows how has AIDS*".<sup>468</sup>

<sup>467</sup> Please refer to the *Special Requirements* chapter.

<sup>468</sup> Interview in Mendoza, 2004.

• **Addictions.** There is a lack of State institutions specialized in medical care – treatment and rehabilitation – addressed to alcoholic people and drug addicts. In most of the cases, an integral coverage (social and familiar causes, etc.) of the problem is not performed and, on the contrary, these groups usually result “blamed”, and hence their situation becomes more complicated and perpetual. There is no uniform criteria on the application of “damage reduction” policies, which have been adopted and have had good therapeutic results in European countries and in Brazil.

• **Social Security beneficiaries.** Numerous denounces express the breach of Social Security Organizations to fulfill treatments for people with special requirements, HIV and other expensive treatment diseases. This is due to the lack of State control and the lack of application of the corresponding penalties. In addition, there is a strong deterioration in the amount and quality of benefits – as well as in the medicine’s discounts – as a result of, among other reasons, the strong indebtedness of provincial States with provincial and national Social Security Organizations, the retention of an important part of the budget by private management, and the financial crisis (that comes about as a result of the minor participation of the workers due to salaries diminution).

The depicted situation has as a consequence the existence of differential mortality processes, differential morbidity, differential health and differential access to health care services, which bring about a worsening of disease or death situations for some human groups. These differences – that can be understood in terms of situation of poverty, social exclusion, ethnic or migrants groups, gender, age, occupational sector, etc. – display an inequitative situation in the respect of human rights. This situation is discriminatory and opposite to all Declarations and Covenants our country has subscribed to in the defense of the universal right to the access, the protection and the promotion of the health as an inalienable property of the peoples and individuals.

*Please refer to proposals N 1 - 42, 219 - 247.*



## **IV | Conclusions**

Regardless of the specific problems addressed in each area of analysis, we consider important to underline once more the significance of the awareness on the role played by racism as an ideological jointer of the different discriminatory phenomena. As Foucault stated, "*Race, racism are the condition to make acceptable to murder in a society of normalization. (...) When I say to give death I am not simply referring to direct murder, but also to all that can be an indirect assassination: the fact of exposing to death, to multiply the death risk for some, or plainly, political death, expulsion, rejection*"<sup>469</sup>.

Different discrimination situations against *indigenous people, afro-descendants or migrants* from neighbouring countries are articulated in the logic of "civilization or barbarism" that permeates the national conformation of our country. Antisemitism and Islamophobia develop as racist phenomena of international quality that penetrate and specify the local modalities of racism. Discrimination against people with special requirements or outliving diseases is rooted on a model that understands both health and the human body as based on the logic of the identity "normalization". This notion – that fostered the shaping of identical citizens, "productive and civilized" – was nuclear to the way in which nationality was understood between the end of the XIX century and the beginning of the XX, and was also important within the model of "social higienism" of French inheritance. Normalization was also applied to the ways of understanding sexual identities, established roles for men and women, notions of lack of productivity of elder adults, and "delinquency" stereotypes associated to certain social, national or cultural segments.

It is for this reason that, in addition to the urgent measures tending to neutralize the most notorious and intolerable consequences of discrimination, it turns out of vital importance to consider modalities of institutional

<sup>469</sup> Foucault M., *Defender la Sociedad*, FCE, Buenos Aires, 2000, pp. 218-231.

action tending to dismantle those racist matrices that sustain the practices of seclusion and exclusion in our society.

It is also important to note that the last decades' social model has deepened social inequalities. This has fundamentally affected discrimination practices, reinforcing the relation between *racism and poverty*, and turning "the poor" into the specific discrimination subject of this historical moment.

The situation of marginalized *childhood and adolescence* unveils the way in which obsolete notions remain. For an integral protection of their rights we consider it necessary to change the doctrine of the "irregular situation" – that justifies the protectionist policy designed in the State Patronage, in opposition to the advances established by the ratification of the International Convention on the Rights of the Child – aiming at their integral protection. When establishing "the best interests of the child", the Convention considers the minors as subjects of rights with capability to petition.

The development of public policies that guarantee life quality, development of potentialities and full participation of *elder adults* without any form of discrimination is a social responsibility and a duty for national, provincial and municipal governments. Elderly people can enjoy the pleasure of life and must actively participate in social decisions.

*Migration* from neighbouring countries is large and has, since the very origins of Argentina, remained permanent. Even so, the discriminatory stereotype transfers onto those collectivities social frustration caused by the breakdown of the economical model. In that way, victims turn into victimizers and attention is deviated from real responsibilities.

Even when some features of legislative adaptation are still to be developed, there is in our country a relatively satisfactory normative framework for the protection of the rights of *women* and the sanctioning of discriminatory behaviors against them. Nevertheless, the most significant problem is the deficient application of these regulations and of the commitments acquired at the moment of signing international treaties: systematical public policies are to be implemented, in a permanent and extensive way, in all provinces for the eradication of gender based discriminatory practices.

Although there should be a plural agenda in concordance to the cluster of situations related to *sexual orientation* and gender identities, there are two problems affecting the different dimensions in which discrimination is expressed in this peculiar field: social inequality and prejudice or cultural intolerance. When the State does not develop adequate measures for clar-

ifying beliefs and homophobic valuations, these groups are led to exclusion and marginalization, in a real denial of legal, political and civil guarantees. Respect towards sexual differences implies a deep revision of collective imaginaries, clinical practices, medical theories and religious convictions.

Argentina has largely advanced in the legislative dimension of what is related to population with *special requirements*. Nevertheless, the greater detected problem is the unfulfillment of the existing regulations, as well as the inexistence or bad functioning of control organs and the lack of budgetary prevision for guaranteeing its effectiveness. It is for these reasons that, in addition to legislative modifications, changes are required: broadening of specific control organs and demanding special requirements legislative observance at auditing public and franchised public services, as well as in private education and health care organizations.

In spite of the fact that the 1994 Constitutional Reform has given a reasonable solution and has considerably minimized the risks regarding *religious* discrimination in Argentina, the status of privilege enjoyed by the Catholic Church over the other religions remains, along with its direct or indirect material effects. The problem of revising provincial constitutions and laws with the aim of adapting them to the principles of equality established by the constitutional text of 1994 also remains. In the same manner, the modification of diverse administrative practices that unnecessarily accentuate the privilege of the Catholic Church is considered important.

We consider that *political corruption* is not to be ignored, taking into account that economical powers – that operate at national, provincial, municipal levels – finance political meetings in exchange for interventions in the decision-making process and the public policies implementation. Protection against discrimination and defense of economical, social and cultural rights of the Argentinean population requires the bringing to an end of political clientelism and prebendary assistentialism.

Stating in 1948 that every human being is born free and equal was a response to the advances of theories that supported “race superiority”. Consequently, Nations’ recognition and support to human rights meant the building of a new paradigm of equality in *dignity* and *rights* facing any type of discrimination.

This paradigm is at the foundation of the current construction of the human rights concept, that emerges from the dictate given by Nations of the world to the United Nations (1945). This dictate basically implies uni-

versal recognition – beyond any ruling regime – of a set of rights that the States are obliged to respect and guarantee.

It is from that horizon that we reach the ulterior developments in human rights. These developments were first based in their diversity, then in their integrity, and currently in their universality. Universality, regarding not only the States recognition but also national and supranational punishment to their violations, can nowadays be added. Universality comprehends not only their recognition on behalf of the States but also the punishment of those violations that are committed both nationally and internationally. From this perspective human beings enjoy human rights that can be opposed to any State, regardless of political-institutional regimes. At the same time, States are obliged to guarantee these rights through active policies.

The current articulation of the human rights concept emerges from a States' delegation of sovereignty; delegation that consists in a limitation of the community of the Nations, gathered under of the United Nations' framework. The old conception of sovereignty as a condition-free power within the limits of a State territory has long been relativized in political doctrine. Such a State power has been limited by the growth of interdependence on an international level and by the developments in the fields of the international law and human rights.

As it has been analyzed, discrimination is a complex phenomenon of historically rooted matrices. Discrimination constitutes a typical behavior that aggravates the principle of equality and constitutes a violation to human rights. One more time, we underline that positive discrimination is excluded, this is all practices addressed to repair differences or previous unbalances. It is for this reason that the adoption of substantial and interdependent measures tending to give full validity to the recognition of the Universal Declaration, hence fulfilling the requirements acquired at the moment of ratifying conventions and other international documents, is imperative for Argentina.

The *State* works in two specific dimensions: exercising the monopoly of power and creating symbols. The first one is referred to all those institutions that make use of the "legitimate violence" allocated to the State described by Max Weber<sup>470</sup>, specially practiced by Security Forces (police

<sup>470</sup> Weber M., *El político y el científico*, Alianza, Madrid, 1992.

powers, gendarmerie and military powers). The second one refers to the set of ideas and representations that are materialized in institutional discourses (educative, juridical, political, cultural, informative, etc.).

Framed by this double dimension, the State is responsible of defending the fundamental rights of the people and is also responsible of – by action or omission – human rights violations.

*Legislation* has not only an instrumental role but also a symbolic one in the shaping of a logic of hierarchical control. The speech of law is structured as a truth discourse regarding social functioning, and acquires another meaning due to its legitimacy for the defining wrong and right, what “is to be done” and what is not. By these means, the discourse of the law enounces rights, duties, prohibitions whilst making public the possibilities of aspiring to rights, guarantees and protections<sup>471</sup>.

While making these possibilities public, the strength of the law is rooted in the prospect of imposing behaviors and in its capability of creating representations and mobilizing individuals in benefit of an idea or an image: the discourse of the law can be thought, therefore, as a “system of names” with a tremendous persuasive power that by so doing shapes social reality.

We consider *media* to be meaningful opinion makers and important mediators, that contribute to the strengthening of discriminatory representations within society and in the making of stereotypes of a discriminative nature. *School institutions* are State agents that build up – that is, contribute or mitigate – the discriminatory processes unfolded within society.

In a similar manner, *health care* appears before all social groups as a “regulating” agent of normalization: the lack of preventive integral policies and a health care system of universal nature becomes a specific discrimination towards great sectors of the population due to their socioeconomic, ethnic, gender (or other modes of diversity) situation.

Therefore, the Plan elaborates proposals addressed to the derogation of discriminative regulations and to the making of new ones, responding to the acknowledged needs while fulfilling existent normative gaps. These norms shall contain a preventive function – indicating and legally defining policies tending to avoid the damaging act of discrimination – along with a punishing function when typifying criminal behaviors.

<sup>471</sup> Segato R., *Las estructuras elementales de la violencia*, Prometeo-UNQ, Buenos Aires, 2003.

The notion stating that social practices are not fundamentally modified by their penalization but rather by taking up pro-active measures tending to transform the modes of perceiving reality is a conviction shared by the authors. Therefore, the Plan proposes both educative and cultural public policies. However, taking under consideration the important amount of discriminatory practices found in the institutional apparatus of the country, it turns out indispensable to impose sanctions – being the perpetrator a public official or a public or private institution – not only as reparatory measures but also as truth discourse transmitted from the State to the citizens.

Two measures addressed to the eradication of all forms of discrimination are then imperative: the incorporation to federal competencies of situations related to any discriminatory act, and the rising of any discriminatory act to the rank of felony.

In addition, civil organizations will have a leading role in the building of a critical perspective in the face of the hegemonic thought. These organizations foster new logics of political participation, different to the political parties' dynamics, in a context of political crisis. The collective work that is here imposed to us – the modification of those discriminatory aspects of our society and the building of a democracy, based on the respect of diversity – requires of important shared efforts both from society and the State.

A final issue that remains to be underlined: the *national and territorial extent* of discriminatory situations in Argentina. Various analysis – for example, the ones referred to indigenous people or health care – have registered that several areas of the country remain abandoned and that their inhabitants are more vulnerable to discrimination than those living in areas where a better life quality can be enjoyed. This situation refers to well-known differences and gaps between the city and the countryside, as well as to differences between Buenos Aires and the rest of the country. In this sense, we consider that a responsible policy against discrimination is to have a federal extent for the effective benefit of all inhabitants, regardless their places or residency.

# V | Proposals



The elaboration and classification of the recommendations has not been an easy task due to the scope, complexity and overlapping of their content. A brief enunciation has been chosen in order to avoid the explanations that are to be found in the Diagnosis, both in the Areas of Analysis and the Institutional Fields. With regards to the recommendations,

- We start with **General Proposals**: proposals that are common to all fields;
- We continue with **Legislative Reforms**, where all legal recommendations are to be found;
- As in the Diagnosis, the most important parts of the recommendations are to be found in **Proposals by Institutional Field of Application**: Justice Administration and Legislation, Public Administration, Education, Security Forces, Media and Health;
- In addition, these Proposals by Institutional Field of Application are divided into **Strategic Proposals**, which are of a general character and progressive application, and **Immediate Action Proposals**, referred to those which application cannot be delayed;
- An **Analytical Proposal Index** is also included, where **common proposals** and **specific proposals** for all victimized groups (as in the Areas of Analysis described in the Diagnosis) are separately identified;
- Lastly, an **Application, Follow-up and Supervision Proposal** is included.

## GENERAL PROPOSALS

1. To reform law N° 23.592 on discriminatory acts in order to incorporate to the federal competence of situations related to any discriminatory act, including the current provisions of the law regarding people that are part of organizations or make propaganda or any form of incitement. In this sense, the reform of article 2 of law N° 23.592 should declare punishable: publicity of ideas based on racist and/or discriminatory principles; incitement of discrimination, acts of violence or incitement to commit acts of such a nature against any person or group of people; and assistance to any kind of racist and/or discriminatory activities, including funding. Sanctions related to such practices must be reformulated, specially for State officials, private institutions such as corporations, Pre-paid medical services, educational institutions, media, etc. Inhabilitation periods for officials (leading to total inhabilitation) and resarsitory fines and sanctions for enterprises are suggested.
2. To declare the competence of the Committee for the Elimination of Racial Discrimination to receive and examine individual claims of alleged victims of human rights violations by the State – according to article 14 of the Convention on the Elimination of All Forms of Racial Discrimination –, establishing INADI as the national competent body for the reception and examination of petitions of persons or groups of persons.
3. To ratify the Optional Protocol to the Convention on the Elimination of Discrimination against Women, without reservations or interpretative clauses, allowing individuals to present denounces to the control organ against uncomplying States.
4. To ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families without reservations or interpretative clauses.

5. To apply national control mechanisms on the distribution, assignment and reception of social benefits (employment, assistance, alimentary plans) under the monitoring and supervision of Consultive Councils. To promote, in this sense, the enlargement and promotion of the Consultive Councils composition by establishing Local Comunitarian Concils integrated by social organization and with public access to beneficiar-ies listings.
6. To promote the progressive replacement of the present employment and/or assitencial plans by establishing a Universal Unemployment Insurance and a National Housing Plan.
7. To fortify specific control organs (ENARGAS, ETOSS, ENRE, ENHOSA, CNRT, etc.) in order to guarantee the provision and access to energy, potable water, gas, transport and communication supplies for all the population.
8. To guarantee biodiversity protection, limiting massive and indiscriminated tree felling and the anihilation of fauna by establishing adequate protective measures.
9. To promote and finance research projects by specific State organs (Anticorruption Office, Counselling Offices, Subsecretariat for Competition Defense and Consumer Defense, etc.) aiming at establishing the relation between discrimination and corruption, specially attending to the judicial or burocratic mechanisms that generate, allow or hide it.
10. To promote structural changes aimed to achieving a sustantial income re-distribution and an inclusive economic growth, in order to overcome the poverty situation in which the country's population lives and its discriminatory consequences.
11. To establish economic and political measures tending to achieve full employment by creating genuine posts that contribute to social integration; by promoting social economies; and by protecting and promoting national industries and productions. In this sense, minimize external debt payments in order to enlarge financial capacities aiming at the reindustrialization and the progressive income re-distribution.

## LEGISLATIVE REFORMS

12. To modify law N 20.744 on Labor Contractarian Regime in order to include a figure specifically prohibiting discrimination within the labor field based on racist and/or discriminatory principles.
13. To promote the sanction of a law suspending the indigenous communities evictions and regularizing the communitarian property of lands by issuing the corresponding titles. Indigenous participation should be assured in order to guarantee the delivery of apt and sufficient for human development lands.
14. To promote the sanction of a law for the protection of indigenous lands of any exploitation of their natural resources with national scope and provincial application, guaranteeing the protection and care to be regulated by the affected communities along with State technical support.
15. To promote the sanction of a law for the restitution of sacred places to indigenous communities, guaranteeing their participation in the process.
16. To promote the adjustment of law N 25.743 on archeological and paleontological patrimony protection in order to recognize the right of participation of indigenous communities en the management and preservation of archeological sites along with State specialist organs.
17. To repeal the articles of every provincial and municipal Codes including "open" contravening figures (lack of morality, public scandal, prostitution, etc.) that allow police agents to detain persons without prior judicial intervention.
18. To promote the sanction of a law tending to recognize the right of access to retirement and social security for women in prostitution situation.
19. To promote the sanction of a national law of civil union for couples of the same sex with similar guarantees and rights to the ones granted for heterosexual couples.

20. To promote the sanction of a law tending to modify article 53 of law N 24.241 on Retirement and Pension Joint System, introducing equal rights on pensions for couples of the same sex.
21. To promote the revision of law N 17.132 on Medical Practice that inhibits sexual change surgical interventions, in order to advance in the formulation of a regulations allowing sexual rectifications as a right for people of diverse gender and sexual identities.
22. To promote the sanction of a law guaranteeing persons deprived of freedom of diverse gender and sexual identity to be hosted with detainees of their same sexual orientation.
23. To promote the sanction of a law for the integral child protection according to the criteria established by the Convention on the Rights of the Child by replacing present laws N 10.903, N 22.278 and their modificatories.
24. To promote the sanction of a law incorporating to the Criminal Code the figure of trafficking in persons according to the criteria established by the Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, granting federal character to these crimes.
25. To promote the sanction of a national and provincial (in those Provinces that have not) law for the protection of the victims of domestic violence, including the housing exclusion of the violent.
26. To reform of article 25 of the National Constitution by excluding the voice "european".
27. To promote the sanction of a law of refuge regulating in general and coherent terms the refuge institution by replacing the present Decree, according to the refuge system approved by the Southern Cone countries and the UNHCR proposals for the region, considering the possibility of incorporating independent experts to the organ in charge of revolving over the refugee condition. This organ is suggested to be an independent and its President to be elected by open competition. In addition, the right to appeal must be guaranteed by way of hierarchical recourse and the measures to speed up such procedure shall be adopted, including the necessary training of administrative officers related to the appeal.
28. To enact the automatic granting of the refugee condition for the cases in which the petition should not have been solved, excluding written

applicable exceptions. The lapse for recognition should not exceed 12 months from the moment of the presentation of the asylum petition and including the above mentioned delays.

29. To enact, for the laws on refuge and asylum, that in the case of simultaneous refuge and extradition petitions, the Elegibility Organ should resolve in the first place.
30. To promote the sanction of a law, on the basis of laws N 24.571 and N 24.757, allowing religious colectivities to have non-working days according to their feasts and/or religious activities.
31. To promote the sanction of a law declaring water, electric and gas supplies as social goods that are to be guaranteed to all the population as minimum condition for a decent and equal life.
32. To promote the reform of the electoral law by revising the representative system, the candidate listings, guaranteeing gender equality, dismantling political clientelism and avoiding asistencialism as ways of gaining political support and modifying the logic of the construction of political power.
33. To promote the sanction of a law modifying the scope of the reparatory laws on State terrorism in order to include those who where sanctioned for opposing to serve military or for opposing to participate in the formal homage of State symbols due to concience objections. In addition, include in the scope of the reparatory laws on State terrorism those privates who, serving the mandatory military conscription, were sent as soldiers to the Malvinas War.
34. To promote the sanction of a law in order to grant an extra benefit to the war pension for those soldiers that resulted injured and/or had physical or phsycological consequences for their participation in the Malvinas War.
35. To promote the sanction of a law derogating articles 469 and 166 (inc. 9) of the Civil Code that establish the impediment for deafs to administer goods and marry.
36. To promote the sanction of a law with severe sanctions for the case of unfulfilling law N 24.901 on the mandatory provisions for disabled people on Social Security and Pre-paid medical services.
37. To promote the sanction of a law on Generic Medicines requiring not only the nomination by drug's name but also to have official bioequivalence testings (active principle, dose and presentation).

38. To promote the sanction of a law on release of terminal patients in order to provide them with decent death conditions and accompanied by relatives.
39. To promote the sanction of a law allowing alternative methods to blood transfusion to be used. It is suggested that public institutions and professionals are to be trained for its application.
40. To promote the sanction of a law establishing the overtaking obligation for all air TV emissions. It is suggested to promote equal conditions in cable TV channels and in Spanish cinema feature presentations.
41. To promote the sanction of a law on broadcasting guaranteeing communicational pluralism and replacing present law N 22.285. Media property accumulation is to be avoided; equal access opportunities regarding titularity and management is to be guaranteed; and all forms of discrimination or retrenchment regarding power, availability of frequencies or contents limitation because of the juridical nature of the proprietary organization (public, commercial, non-profit organizations) is to be prohibited. It is suggested to provide in every region of the country a frequency for national public TV and national radio reception; and to reserve a frequency for provincial TV and radio, and municipal FM band.
42. To promote the frequency reservation, in the law on broadcasting, of no less than one for universitarian services (one for each of the National Universities) and for technical plans to reserve at least 33% of the frequencies in all bands for non-profit organizations aiming at the insertion in the community as criteria for frequency assignment.

## PROPOSALS BY INSTITUTIONAL FIELD OF APPLICATION

### ■ Justice Administration and Legislation

#### Strategic Proposals

43. To create a Commission for Domestic Legislation Adjustment (national, provincial and municipal) in order to detect and rectify all discriminatory disposition, and to include new rights contained in the National Constitution, International Conventions and Treaties signed and ratified by the country. This commission is suggested to be conformed by INADI, provincial representatives, members of the Parliament and of the Ministries of Justice and Human Rights, Social Development, Labor and Social Security, Health and Environment and Education; and guaranteeing the participation of well-known jurists, representatives of aboriginal communities and non-governmental organizations.
44. To create a Commission for Domestic Legislation Adjustment (national, provincial and municipal) in order to include the new rights awarded to indigenous people contained in the National Constitution (art. 75, inc. 17) and in the ILO C169 Convention concerning Indigenous and Tribal Peoples in Independent Countries. This commission is suggested to be conformed by INAI, INADI, provincial representatives, members of the Parliament and of the Ministries of Justice and Human Rights, Social Development, Labor and Social Security, Health and Environment and Education; and guaranteeing the participation of well-known jurists, representatives of aboriginal communities and non-governmental organizations.
45. To create a Commission for Research and Follow-up in order to detect,



inform and sanction judicial sentences, considerations and investigative procedures that within the judicial scope contain discriminatory conceptions, both at national and provincial levels. This commission is suggested to be conformed in the area of the Magistrate Council.

46. To promote the public discussion on the application and eventual reformulation of article 2° of the National Constitution.
47. To adequete the budgetary assignments of the competent areas – Public Prosecution and Counselling Offices in particular – as an essential condition for the protection of the rights of victimized groups.

### **Immediate Action Proposals**

48. To create a specialized body of public defendants for children, within the Public Ministry, with competencies both in the application of special measures (tutoring) as in causes in which conflict with criminal law might be suspected.
49. To create a specialized Public Prosecution Office for the investigation of trafficking in persons, especially women and children.
50. To design a program specially aimed at the access to justice for indigenous people, training judges and public prosecutors in the new indigenous rights, and guaranteeing the implementation of legal counselling, translating assistance, cultural specialist's reports and recognizing indigenous consuetudinary law, according to the ILO C169 Convention concerning Indigenous and Tribal Peoples in Independent Countries.
51. To apply the required measures as to effectively fulfill law 25.517, aiming at making available for indigenous communities the mortal remains of aboriginals kept in museums and/or private or public collections, coordinating these procedures by INAI and with the participation of indigenous people.
52. To guarantee in all the country the association right of women in prostitution situation, granting the organizations that defend and promote their rights with legal status.
53. To guarantee in all the country the association right of organizations aimed at the protection and promotion of people with diverse gender and sexual identity.
54. To apply the required measures as to guarantee in all provinces the fulfillment of alimony support of children of separated couples, sanctioning infulfillment.

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55. To supervise the application of the taxation exemptions for religious entities without local discriminations.
  56. To create a National Detained Registry. It is suggested to be placed within the Ministry of Justice and Human Rights, and to hold free information access for human rights organizations.
  57. To enact criminal process competencies to be exclusively accorded to judges.
  58. To promote restorative justice procedures (*probation*), enlarging the number of cases or situations where the benefit is applicable, guaranteeing the fulfillment of control mechanisms.
  59. To apply the required measures as to eliminate "meritorian" practices and to promote open competition for posts, specially aiming at gender equating and disabled people under-representation.
  60. To apply the required measures as to train and update judges, justice operators and public officials' education regarding the advances in human rights international commitments and aiming at the comprehension of discriminatory practices in all spheres.

## ■ Public Administration

### Strategic Proposals

61. To fortify the administrative institutions created in order to fight discrimination (INADI, Human Rights Secretariat, Public Prosecution Offices, specialized provincial offices, etc.) by allowing them to receive, investigate and function as mediators between the parts and INADI or the judicial system, according to whom it may concern.
62. To promote the establishment of delegations of the institutions allowed to receive denounces (INADI, Public Prosecution Offices, etc.) in every Province and in all those cities of more than 100,000 inhabitants, establishing agreements on denounce reception for further refer to INADI and guaranteeing INADI's intervention in the monitoring of provincial and municipal antidiscrimination plans and programmes.
63. To promote and support the organization and functioning of social organizations of indigenous communities, afrodescendant, migrants and other groups or ethnical, cultural, religious and linguistic minorities. It is suggested to articulate its functioning with "Law Citizen Control" projects in order to train them in the knowledge, monitoring and control of human rights laws execution.
64. To assure the participation of social organizations – in the proposal of antidiscrimination measures and other affirmative actions – in order to establish participation forms (with voice and vote) for representatives of diverse interests affected by State decision-making processes.
65. To promote, develop and finance investigative projects by specific State organs (INADI, INDEC, Human Rights Secretariat, National Universities, etc.) in order to establish the discriminatory problem extension, by analyzing media and educative discourses, discriminatory behaviours and their origins, as well as the ways of dismantling them.
66. To promote the Women National Council, making transversally effective the gender approach in every public policy and budgetary assignment.
67. To promote and professionalize Women Areas in every Province, creating them where they do not exist, in order to develop joint measures for the eradication of discrimination against women in all the country.
68. To promote the National Institute of Aboriginal Affairs (INAI), providing it with autonomy and making the indigenous people participation effective, as established by law N 23.302.

69. To develop a coherent, broad and long term project aimed at regulizing the migrants' situation.
70. To prevent and sanction every labor and/or legal discriminatory practice (lower salaries, quotas, unfounded sanctions) against any discriminated group. The creation of a specific area at INADI in order to attend to the different situations is suggested.
71. To adecuate the budgetary assignments of the Public Administration competent areas as an essential condition for the protection of the rights of victimized groups.

### **Immediate Action Proposals**

72. To promote a broad circulation of national and provincial laws and jurisprudence on discriminatory issues.
73. To train public officials and security personnel in avoiding discriminatory or arbitrate practices regarding under-privileged social sectors and in fighting discriminatory stereotypes.
74. To apply the necessary measures in order to preserve religious neutrality in public offices, limiting the use of confesional symboligies.
75. To sanction the necessary measures forcing public organisms to remove discriminatory *graffitis* in every public building on the course of the issuing week as a way of preventing their spreading ability.
76. To apply effectively and nationally the dispositions regarding the regularization of land property (with the handing over of the corresponding titles) for the cases of persons or groups that had occupied them for over 20 years.
77. To guarantee the efective restitution of indigenous communities' territorial rights in all the country, according to the international convetions and national laws on the subject.
78. To adopt a national campaign specially aimed at registering and providing of IDs for all persons belonging to indigenous communities in all the country and without costs for the beneficiaries. It is suggested for this campaign to be designed by the competent State organs (INAI, RENAPER, etc.) along with indigenous communities organizations in each Province in order to apply a methodology in accordance with the needs and features of each community in each region.
79. To promote the fulfillment by the organ in charge of the National Registry of Indigenous Communities of the obligation of unifying the com-

munities, organizations and indigenous people data that the States holds, both at national and provincial levels.

80. To promote the constitution of the Indigenous Coordination Council, according to law N 23.302.
81. To design and apply a national program of sustainable development for indigenous communities in agreement with their needs and cultural features in order to effectively reduce their poverty and extreme poverty condition, guaranteeing their participation in such process.
82. To design a program for the strengthening of indigenous communities and organizations. It is suggested for such program to be implemented by INAI along with the Indigenous Coordination Council and the indigenous communities and organizations of each Province.
83. To design a program for the strengthening of indigenous women organizations aiming at the promotion of indigenous women rights, the encouragement of their participation in communitarian decisions and the eradication of violence towards them. It is suggested for such program to be implemented by INADI, INAI, National Women Council, Human Rights Secretariat along with the provincial corresponding areas and guaranteeing indigenous participation.
84. To transform October 12 into a historical reflection and inter-cultural dialogue day.
85. To develop a program for the promotion of indigenous tangible and intangible cultural patrimony, aiming at supporting both at national and provincial levels projects tending to promote indigenous peoples culture projects by stimulating the study of their history, languages and festivals or holidays as part of Argentine history and culture; for example, creating an Aboriginal Peoples Art Museum. It is suggested for such program to be developed by the National Culture Secretariat, INAI along with Provincial Culture Secretariats and the indigenous communities and organizations of each Province.
86. To train national and provincial Public Administration personnel attending for indigenous communities in the respect for these communities and their rights, aiming at the eradication of discriminatory practices installed in public institutions.
87. To develop public policies aiming at preventing, investigating and punishing trafficking and sexual exploitation in children.
88. To develop integral public policies for childhood, contemplating girls,

boys and adolescents as subjects of rights, tending to “de-institucionalization” and guaranteeing the rights established by the Convention on the Rights of the Child.

89. To review integrally the minority detention system for children in conflict with criminal law, developing policies that guarantee their social rehabilitation, their education and labor training, assuring their physical and mental health, facilitating their contact with families and relative reencounters. Supervision and judicial surveillance of the places devoted to children allocation must be assured, severely punishing abuses and mistreatments.
90. To generate programs contemplating the access to domestic violence support groups for girls, boys and adolescents, guaranteeing the attention by specialized professionals and taking under consideration the word of the children.
91. To develop public policies aiming at preventing, investigating and punishing trafficking and sexual exploitation in women, both at national and international levels, guaranteeing the protection and physical and psychological rehabilitation for victims by establishing labor and economical re-insertion mechanisms.
92. To develop programs and campaigns for public administration aiming at eradicating gender discriminatory practices within institutions and focused on the different sectors these institutions serve, tending to transform cultural discriminatory patterns. It is suggested for such programs to be developed and implemented with the participation of women associations involving males.
93. To fortify the action of the Tripartite Commission for Equal Opportunities and Treatment in the Labour World of the Ministry of Labour, Employment and Social Security.
94. To apply the required measures as to guarantee within the National Program on Sexual Health and Responsible Procreation the functioning of the Social Organizations Consultive Council, enlarging participation for women associations.
95. To urge Provincial Governments to adhere to the National Program on Sexual Health and Responsible Procreation, providing those material goods that guarantee universal access to such program.
96. To insure the effective national fulfillment of domestic violence laws, demanding the application of the dispositions on housing exclusion of the violent.

97. To develop integral programs of prevention, sanction and eradication of domestic violence in all the country, including legal advice, medical and psychological care, and labor and professional insertion plans for women in order to overcome economical dependence situations. It is suggested for these tasks to be developed by specialized professionals.
98. To create refuge or transit houses for domestic violence victims in crisis situations, provided with specialized personnel. It is suggested for such programs to include actions tending to the mandatory treatment of violents.
99. To promote the training of qualified professionals in order to work inter-disciplinarily in cases of domestic violence with gender and age protection approaches tending to the treatment both of victims and violents.
100. To generate institutionalized control mechanisms by organizations of protection of rights in order to monitor the fulfillment of laws and programs tending to prevent, sanction and eradicate domestic violence.
101. To promote the creation of maternal kindergardens provided with specialized personnel, with special emphasis on social responsibility and shared obligations of mothers and fathers.
102. To promote the process adequation allowing photographic records in IDs to correspond to the physical aspect of persons with diverse sexual orientations and gender identities.
103. To create special programs of labor and professional training, both at national and provincial levels, aiming at the promotion of labor insertion for persons in prostitution situation and/or with diverse sexual orientation and gender identity.
104. To include people with special requirements in population census and specific researches by INDEC as well as by Rehabilitation Centers.
105. To create adequate control organs incorporating disabled people organizations and rehabilitation professionals as members with voice and vote within the Transport Secretariat and the Urban Planning Commissions. It is suggested to include this issue in public audits.
106. To train at least one official of each public national, provincial and municipal office in sign language in a mandatory way, in order to function as interpreter for deaf population. Such training is suggested to be part of a National Plan developed by the National Ministry of Education.

107. To promote the work of libraries for deaf people and of associations devoted to literary and bibliographic translation into braille.
108. To create specific programs for labor insertion of people with special requirements provided with training and adequate technology for that population.
109. To promote protected labor areas respecting the legally established quota within national, provincial and municipal public administration offices for people with special requirements.
110. To review the assignment system and the disability pension amounts, in order to allow such amount to cover for the needs of persons with special requirements, guaranteeing their inclusion in rehabilitation plans developed by the State.
111. To design and/or improve accesibility in public web sites (gov.ar) for people with low vision and blind according to valid standarized regulations.
112. To establish the provision of technical aids (adapted computers, optic aids, etc.) for people with special requirements, considering these to be elements of access to education, work and culture.
113. To establish minimum accesibility criteria for goods and services acquired by public administrations in order to promote designs for all. It is suggested for this technical catalogue to become a basic norm with universal criteria for all public administration office and to be able to adapt as technological development and adquired experience evolves.
114. To review completely the Social Security System in order to adequate it to universal retirement solidary norms, establishing amounts of allowances permitting a decent life for elder adults. In addition, the implementation of special mechanisms aiming at including indigenous elder adults in the Social Security System is suggested.
115. To apply the necessary measures so as to reorganize the National Institute of Social Services for Retired and Pensioned (PAMI), aiming at establishing a transparent administration with real participation of beneficiaries and effective control over the quality of the provisions. The progressive universal inclusion as beneficiary of every person at retirement age is suggested.
116. To design specific labor programs aiming at including elderly persons in productive activities adequated to their capacities, tending to profit from their wisdom and experience for the training of other people. It is



suggested to give continuity to the National Program of Narrator Grandparents and to promote all other successful experience.

117. To apply the necessary measures so as to reinforce the surveillance on the functioning of geriatric establishments in order to avoid abusive treatments. It is suggested to consider in depth the sportive, recreative and educative activities planning.
118. To develop national, provincial and municipal policies aiming at guaranteeing life quality, potentials development and full participation of elder adults, taking under consideration to stimulation requirements (intellectual, affective and physical) and to differences between men and women. It suggested to specially attend to discrimination victims (handicapped elder adults and/or lacking economical resources and/or lacking Social Security and/or lacking contention networks and/or living alone) and to support those organizations developing cultural, social and/or sportive activities in order to guarantee adequate meeting facilities. The training of specialized personnel is suggested.
119. To apply the necessary measures so as to expand the provincial and municipal network of programs and Directions for Elder Adults.
120. To apply the necessary measures as to effectively fulfill the administrative resolution aiming at the raising of police records of alleged felonies committed during the period of mandatory military service for "conscience objections".
121. To consider specially the situation of isolated communities, guaranteeing an adequate public transport system, promoting the roads maintenance and the construction of bridges, making circulation easier and promoting products commerce.
122. To insure the provision of essential services (communications, gas and electricity provision, medical assistance and education) for isolated communities.
123. To apply the necessary measures as to effectively fulfill the principles stated in article 42 of the National Constitution, avoiding monopolical, abusive or distorted practices in pharmaceutical commercialization.

## Migrant and Refuge Policy

### Strategic Proposals

124. To apply the necessary measures as to insure the effective presence of INADI in the National Migration Direction, as well as in every delegation of the country.

### Immediate Action Proposals

125. To promote adequately and broadly the dispositions of law N 25.875 on migrations.
126. To dispose for the composition of CEPARE – or the eventual eligibility body – to respect the participation of different Ministeries and other social agents, guaranteeing humanitarian basis for the determination of the refugee status, without excusively considering the issue from the security point of view.
127. To promote the Movable Migration Delegation practice, in order to access neighbourhoods, zones and regions simplifying the legalization of undocumented migrants.
128. To apply the necessary measures so as to reduce the costs of migratory and residencial regularization procedure.
129. To establish international conventions between Argentina and the countries of origin of the most populated migrant communities in order to make migratory procedures more agile and to reduce the corresponding consular taxes.
130. To establish international conventions between Argentina and the countries of origin of migrant workers in retirement situation in order to sum up the retirement contributions made in both countries. It is suggested to accord a labor mutual information regime with the countries of origin.
131. To stimulate the visit of consular officials to the residencial places of the diverse foreign communities in order to make the obtention of residencial, labor and educative documents easier.
132. To establish a special national regime of social assistance in order to facilitate the refugee and its family integration in the country.
133. To promote the inclusion of refugees in regular housing and social assistance plans, declaring them exent of requirements difficult to

- achieve, specially admitting the document recognizing the refugee condition to replace ID and the requisite of minimal permanent residence.
134. To organize training and orientation courses for employees assisting migrants – civil and security forces employees – in order to achieve a respectful and efficient treatment of persons and their rights.
  135. To promote the continuous and updated training of administrative personnel attending refugees and asylum petitioners according to the international commitments subscribed by the country, specially training diplomatic and border security personnel in order to solve the petitions demanded.

## **Religion**

### **Strategic Proposals**

136. To review the practical application of article 2º of the National Constitution and avoid automatic economical privileges, giving adequate proportions to religious social services regardless of the confession.

### **Inmediate Action Proposals**

137. To develop proactive activities aiming at cultural communitarian development and inter-religious dialogue, promoting the support to celebrations and feasts of foreign communities and designing inter-cultural and inter-religious events by State authorities.
138. To introduce common chaplain admission practices of every religious confession both in reclusion establishments and in hospitals.
139. To readjust the military chaplain regime allowing the access, or at least the availability, of ministers of other confessions.
140. To apply the necessary measures as to respect to free exercise of indigenous people spirituality, avoiding the imposition of beliefs that could hinder the free exercise of indigenous spirituality.

## Penitentiary Policy

### Strategic Proposals

141. To review the national penitentiary system (Federal Penitentiary Service and Provincial Units), aiming at the respect of personal rights, in order to fulfill adequately its function of “veiling for security and custody of people subdued to processes, and promoting the social readaptation of the convicted”.

### Immediate Action Proposals

142. To apply the necessary measures so as to make the separation of jailed convicted population from jailed prosecuted population effective.
143. To promote the functions of the Penitentiary Prosecutor, providing it with the required material and human resources needed.
144. To establish an external audit system over the Penitentiary System in its different areas, promoting the external control of reclusion establishments by non-governmental organizations.
145. To create an Internal Indictment Direction, outside the Federal Penitentiary Service and under the competence of the Ministry of Justice and Human Rights, as to instruct internal administrative investigations.
146. To increase urgently the budget assignment related to food supplies and minimal survival goods for jailed population and guarantee its effective application.
147. To insure primary health care for jailed population, taking under consideration psychological assistance as well as addictions, infectious-contagious and mental diseases prevention. A periodical medical check-up for the detainees (sampling basis) outside the penitentiary and police institutions as a control method is suggested.
148. To insure an adequate health service for jailed population, organizing addiction treatment and rehabilitation regimes, and special regimes for HIV carriers.
149. To develop penitentiary policies aimed specifically at the situation of detained women.
150. To adequate feminine reclusion areas in order to create suitable conditions for the hosting of detainees with small children.
151. To promote the schooling and primary, secondary, university and

skills education of the detainees, connecting such learning with private or public companies.

152. To renovate the training and composition of penitentiary personnel, increasing its professionalism and improving its working conditions.
153. To train penitentiary personnel in alternative techniques to the use of force and conflict management in the treatment of detainees by way of workshops and other participative practices.
154. To promote areas of working access allowing the social reinsertion of detainees, and develop an incentive public policie towards those hiring ex-detainees.
155. To promote the action of NGOs devoted to insure the social reinsertion of the ex-detainees.
156. To promote policies of intervention, orientation and assistance for families of ex-detainees and detainees, allarding economical aids for the latter lacking resources for visiting them.

## ■ Education

### Strategic Proposals

157. To promote, develop and finance investigation projects by specific State organs (INADI, INDEC, Human Rights Secretariat, National Universities, etc.) aiming at establishing and analyzing discriminatory behaviours and their origins, as well as the ways of dismantling them, as well as designing and executing projects tending to establish the discriminatory problem extension in media and educative discourses.
158. To promote, develop and finance a National Training Plan destined to public officials, investigators, teachers of every level, social communicators aiming at promoting the respect and defense of human rights, at understanding and changing discrimination mechanisms and at dearticulating linguistic guidelines containing racist, sexist and homophobic contents in public and private institutions.
159. To guarantee the access and permanence in mandatory primary education of all boys, girls and adolescents by way of the institution of scholarships. It is suggested to fortify the different scholarship programs carried out by the Ministry of Education in the different levels of the educative system, taking under special consideration the situation of indigenous communities.
160. To adequate the budgetary assignments of the competent areas as an essential condition for the protection of the rights of victimized groups.

### Inmediate Action Proposals

161. To fortify the academic reflection activities regarding racism, racial discrimination and xenophobia by way of sensibilization activities for students during the school year.
162. To promote a debate between teaching and directive personnel in schools over the function of anti-discrimination educative actions as well as over the promotion of rights.
163. To design and execute researches on school manuals destined to identify and analyze discriminatory stereotypes that school books help in building in order to elaborate a proposal over the replacement of linguistic, racist, sexist and homophobic guidelines.
164. To guarantee sexual education in schools in order to allow boys, girls

- and adolescents to decide in a free way and without discrimination, coercion or violence to enjoy adequate sexual health levels, insuring responsible procreation and preventing adolescent pregnancy.
165. To carry out training activities in every governmental agency in order to promote the reflection of hierarquical and all other personnel in each area (health, education, justice, security forces, migrations, public administration, etc.) over the discrimination issue.
  166. To carry out sensibilization and training activities over the discrimination issue with NGOs and social movements in order to generate integration strategies.
  167. To promote the adequate knowledge and respect towards religious beliefs and freedom of worship in educative establishments.
  168. To fortify the National Program for Inter-cultural Bilingual Education developed by the National Ministry of Education, providing it with the legal mechanisms for its implementation in every province in order to guarantee the schooling and bilingual education of all indigenous people.
  169. To promote special learning courses on indigenous people languages for school and hospital personnel.
  170. To promote and support aboriginal cultures promotion projects by way of stimulating the study of their history, language and feasts, understanding it as the promotion of argentine culture.
  171. To provide for the acute presentation of national history, pointing out the contributions of the different cultures and civilizations in the shaping of national identity, including the role of ethnic, cultural, religious and linguistic groups and minorities.
  172. To promote the study of indigenous languages in way of extinction as well as their recovery through dictionaries and grammars.
  173. To promote the dialogue between indigenous people and academicians regarding scientific investigation ethics and the respect towards cultural constitutive elements (languajes, consuetudinary law, religious spirituality, etc.).
  174. To create integration teachers posts in every place of the national territory where they are needed considering the requirements of the population.
  175. To apply the necessary measures so as to recognize the bilingual character of deaf population, articulating school integration spaces.
  176. To create assistance departments for higher education students with

special requirements depending on the National and Provincial Ministries of Education.

177. To include a mandatory course on "Special Requirements" in teachers training of all levels as a way of approaching the issue and solving practical problems.
178. To include in social communication higher education curricular programs special contents referred to the promotion of rights and the combat of all forms of discrimination.
179. To promote the inclusion of training and update courses over the problem of discrimination in professional associations and unions related to social communication and media.
180. To estimate the execution of extension policies in schools and universities aiming at the participation of adolescents and elder adults in the design and implementation of such policies.
181. To guarantee the access to mandatory primary education of boys, girls and adolescents living in isolated communities.
182. To facilitate the admission of refugees to Universities, both as students and as teachers, allowing the document recognizing the refugee condition to replace ID and the requisite of minimal permanent residence to be exempted.
183. To consider specially the situation of children belonging to ethnic or migrant minorities that lack documents to continue their studies and/or to obtain their diplomas and certificates.
184. To promote the policy of granting academic diplomas to migrants, specially children, regardless of the parents' migratory conditions.
185. To promote the integral training of health personnel, taking under special consideration the review of study plans and the problematization of the traditional biologist training in every higher education course. The incorporation of the knowledge on socio-economical conditions, public health, and ethnic, cultural, gender and sexual orientation diversity is suggested.
186. To promote the specialized study on the particular needs of elder adults in every dimension (health, psychological, education, labor, sexuality, etc.) in higher education courses.
187. To promote and support the investigation on the effects of the use of genetically modified organisms (GMOs) on human health, biodiversity and sustainable economical development in order to apply the adequate agricultural policies.



188. To eliminate the educative dispositions against the equality of all, for example, the requirement for teachers of all levels to be nationals or for foreign children not to be allowed to carry national symbols if they have merit.
189. To modify the educational regime in order to authorize conscious objections for students and/or teachers belonging to Jehovah's Witness community, recognizing their right to abstain from honoring national symbols or to participate actively in national feasts due to religious motives.

## ■ Security Forces

### Strategic Proposals

190. To promote the organizational parameters and functioning restructuring of Security Forces, specially police, on the basis of incorporating direct communitarian participation in the formulation and implementation of public security policies.
191. To establish citizen control mechanisms over legality and efficiency of the public security system, guaranteeing the adequate exercise of governmental conduction on the system.
192. To increase the proffessionality and training requirements for policemen in every province, incorporating human rights training and taking non-discrimination issues under special consideration.
193. To adecuate the budgetary assignments of the Public Administration competent areas as an essential condition for the protection of the rights of victimized groups.

### Immediate Action Proposals

194. To apply the necessary measures as to regularize the over-population situations of detainees in police stations and increase urgently the budget related to food supplies and minimal survival goods for jailed population and guarantee its effective application.
195. To promote the control of the situation of boys, girls and adolescents detained in police stations by the Secretariats for Security and Human Rights, insuring a fast resolution of the situation.
196. To establish an external audit system over national, provincial and municipal Security Forces in every area of service, promoting the external control by non-governmental organizations.
197. To create an Internal Indictment Direction, outside the structure of the different forces, as to instruct internal administrative investigations.
198. To fortify the Federal Police Discriminatory Conducts Investigation Unit in consultation with INADI.
199. To create the figure of the Comune Security Defendant with the function of defending collective and individual rights of the inhabitants faced to actions or omissions by public administration personnel and/or

security forces (public or private) that imply the illegitimate, irregular, defective, abusive, arbitrary or negligent exercise of their functions.

200. To apply the necessary judicial and institutional control measures in order to avoid abuses, thefts and/or arbitrary detentions based on discriminatory conceptions in security operations in poor areas and public events.
201. To apply the necessary judicial and institutional control measures in order to adequately investigate arbitrary detentions and mistreatments to persons in prostitution situation, sanctioning those public officials (police, attorneys, judges, etc.) not fulfilling their legal obligations.
202. To design and implement a Practices Control Plan for Security Forces personnel regarding procedures involving boys, girls and adolescents, in order to avoid human rights recurrent of abuses and violations.
203. To train in alternative techniques to the use of violence all Security Forces personnel, taking under special consideration the respect of the diverse victimized groups.

## ■ Media

### Strategic Proposals

204. To apply the necessary measures so as to have State Broadcasting services guarantee cultural, linguistic, sectorial and regional diversity. It is suggested to take effective measures in the different towns and regions of the country, incorporating the different languages spoken daily in each zone to the programming.
205. To apply the necessary measures as to guarantee equal opportunities in the access to property, ownership and management of broadcasting services, avoiding monopolical practices.
206. To guarantee spaces for discriminated and/or invisibilized communities, groups and sectors expressions in State TV and radios. It is suggested to make special agreements with social organizations representing them.
207. To adequate the budgetary assignments of the competent areas as an essential condition for the protection of the rights of victimized groups.

### Immediate Action Proposals

208. To apply the necessary measures in order to execute an effective State follow-up and control over all forms of discrimination, prejudices, jokes, aggressions and/or stigmatizations against any group or sector in society in forms and contents of State, private, and communitarian media, as well as of Internet pages. It is suggested to create a Media Discrimination Observatory depending upon COMFER, in addition to creating a specific area within INADI.
209. To enlarge and effectivize existing control, closing and sanction measures for media promoting pedophilia and/or infantile sexual tourism.
210. To promote the development and implementation of norms and ethical and professional codes for social communication respecting and valuing all forms of diversity and publicly sanctioning those breaking them.
211. To develop national promotion campaigns aiming at raising awareness on discrimination, xenophobia and racism. It is suggested to emphasize the relationship between poverty, social exclusion, racism and discrimination, as well as the peculiarities of all forms of discrimination.
212. To promote the production of TV and radio spots aiming at the sensi-

bilization on the riches of diversity and multicultural societies, the value of mutual respect, solidarity and integrative encounter.

213. To promote the systematic inclusion in large audience programmes (both fictional and news) of contents aiming at the sensibilization on the riches of diversity and multicultural societies, the value of mutual respect, solidarity and integrative encounter. It is suggested to make use of the potential of each media and type of program for massive, segmented and focalized audiences.
214. To promote the collaboration of artists and communicators in promotion campaigns aiming at raising awareness over the problem of discrimination, introducing it as a topic in their shows.
215. To make effective the promotion of indigenous rights in all the country and in every indigenous language spoken in Argentina.
216. To promote a contents policy for web sites aiming at sanctioning Internet providers hosting sites with discriminatory and/or xenophobic information as a way of hindering their promotion capacities.
217. To include mandatory antidiscriminatory contents in all curricular programmes related to higher education in social communication, as well as in every specific training course.
218. To promote the training and constant update on discrimination issues in advertising chambers, professional boards and unions related to communication.

## ■ Health

### Strategic Proposals

219. To apply a National Health System of universal provision under the logic of health as a right, guaranteeing integral and gratuite care for every inhabitant and/or resident of the country without any form of discrimination.
220. To find out the health prioritarian needs of the population by way of an epidemiological research integrating scientific with communitarian knowledge of all groups and social sectors.
221. To prioritize in all the national territory health promotion and prevention by way of operating over the living and working conditions as illness causes, providing residential primary care and assuring the access to every level of complexity.
222. To restrict and control the use of agrochemicals in agrarian activities, replacing them by alternative plague control methods which do not risk population health.
223. To provide with cultural mediators and interpreters in assistencial services in those areas where significant multilinguism exists (deaf, indigenous communities, other ethnical groups and migrant groups).
224. To fortify the Indigenous Sanitarian Agents system, providing the articulation of medical practice and traditional knowledges.
225. To apply a rational medicine policy, guaranteeing an integral and non-discriminatory provision by way of implementing an essential medicine therapeutic form in public establishments.
226. To design the necessary measures as to achieve an adequate correlation of apparatus by inhabitant, aiming at a rational use of diagnosis and treatment methods and at assuring the minimal provision for all the population.
227. To create rehabilitation center in every location with a population over 75,000 persons and/or at 200 km of distance from the nearest rehabilitation center, guaranteeing movility for the population attending such center. It is suggested for the rehabilitation centers to be articulated with special schools, depending upon the National Ministry of Health and provided with the necessary personnel for the services, as well as with the possibility of providing the population with special requirements with the technological appliances needed for the recovery and/or professional reinsertion.

- 228. To promote the social participative management of health assistencial services involving health workers and societal organizations in the effective control of health public policies.
- 229. To adecuate the budgetary assignments of the competent areas as an essential condition for the protection of the rights of victimized groups.

### **Immediate Action Proposals**

- 230. To apply the necessary measures as to eliminate every administrative disposition implying a stigmatized differentiated care in hospitals and public health centers, specially those previsions related to special payments and poverty credentials.
- 231. To insure the equal treatment of all persons in every health center, applying sanctions to public officers displaying discriminatory attitudes or treatment.
- 232. To promote the adequate treatment and epidemiological study of pathologies related to the use of toxic agrochemicals in rural activities. The implementation of communitarian prevention campaigns on the issue is suggested.
- 233. To fortify the Indigenous People Health Programme, guaranteeing the incorporation of health professionals with knowledge of indigenous medical practices and applying the necessary measures as to find out the health situation of members of the communities (child mortality; mother mortality; inmunological provision; nutritional state, specially women and children; endemic diseases; sexually transmitted diseases and HIV; accesibility; etc.).
- 234. To design concrete, effective, mesurable and culturally acceptable actions tending to reduce child and mother mortality, undernourishment, adolescent pregnancies and sexually transmitted diseases incidence, within the Indigenous People Health Programme and the National Program of Sexual Health and Responsible Procreation, stimulating active women participation.
- 235. To insure a basic health service for isolated populations by way of establishing sanitary agents and of creating communitarian health centers with periodical visits of physicians and nurses, and radio provision.
- 236. To make effective the implementation of the National Program of Sexual Health and Responsible Procreation in all the national territory, providing it with the required means, the necessary professional training and promoting the social debate over the non-punible abortion.

237. To develop massive prevention campaigns on HIV/AIDS and sexually transmitted diseases, respecting gender and sexual orientation approaches.
238. To train health workers by way of workshops in order to erradicate mistreatment and gender discriminatory treatment, particularly towards indigenous women, women with septic abortions, poor pregnant women, and similar cases.
239. To apply the necessary measures so as to create specialized centers with special personnel and standarized procedures in hospitals devoted to the reception and care for violation and other sexual crimes victims.
240. To promote actions tending to recognize the rights of people wiith diverse sexual orientation and gender identity within health institutions (public and private of all jurisdictions) in order to provide them with specialized orientation care, not to tag them as "infective diseases" and guaranteeing internation and attention spaces where their sexual orientation and gender identity is respected.
241. To develop periodic national preventive and detection campaigns for disabilities allowing the early location of the problem and adequate treatment. It is suggested to articulate them in the educative field by way of medical check-ups in the school periods.
242. To insure an effective health service, adequate for prision population, taking under consideration psychological assistance, addiction, infec-tive-contagious and mental disease prevention.
243. To insure the treatment and addiction rehabilitation of prision popula-tion, and organize special regimen for the care of prision HIV carriers.
244. To apply an efficient control and audit system of the services provided by Social Security Organizations, in order to guarantee integral care without any form of discrimination.
245. To insure the highest efficiency of the Commission of Sexual Minorities and HIV/AIDS Carriers, and recognize the work of other commis-sions emerging from civil society operating on similar issues.
246. To apply the necessary measures so as to guarantee the access and adequate provision of health services for elder adults in order to take care of the requirements by specifically trained professionals and tech-nical workers.
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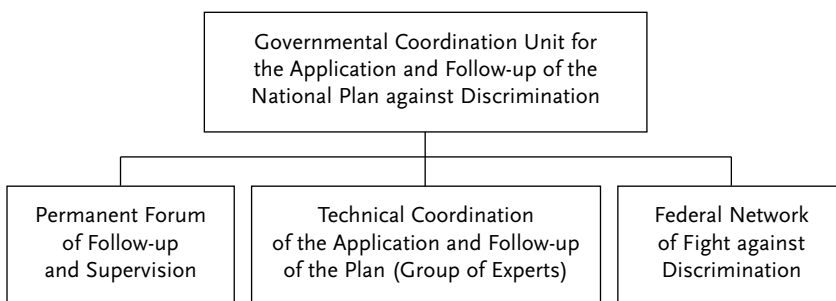
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## **APPLICATION, FOLLOW-UP AND SUPERVISION PROPOSAL**

In order to contemplate the different requirements, the participating actors and the difficulties that may arise both in the implementation of the recommended proposals so as to the continuity of the monitoring over the discrimination situation in Argentina, as well as to the eventual modifications of this Plan according to new problems to be detected, the following organs have been designed so as to contemplate the participation of different instances of State power and civil society.

Aiming at the correct fulfillment of this National Plan against Discrimination, an organization scheme is suggested, allowing the participation of the highest governmental sectors (in order to make the application effective), provincial representatives (in order to guarantee the national fulfillment) and non-governmental organizations (in order to insure participation and supervision of social movements and the incorporation of amendments and corrections arising from the modification of the discriminatory situation in the country).

The responsibility for the application, follow-up and supervision of the National Plan against Discrimination should be taken up by four organs, whose relations are expressed in the following scheme:



### 1. Governmental Coordination Unit for the Application and Follow-up of the National Plan against Discrimination

This Coordination organ, formed by the three State powers and the specific organ for combatting discrimination, should assume the central application and follow-up sphere of the Plan and should be the articulator between the Civil Society Forum, the Technical Coordination and the Federal Network, composed by provincial representatives.

This Coordination should be formed by:

- One representative of the Cabinet of Ministers (ranked as State Sub-secretary or higher);
- One representative of the Chamber of Deputies;
- One representative of the Chamber of Senators;
- One representative of the Magistrates Chamber;
- One representative of INADI's Board.

This distribution is aimed at the representation in the Coordination of the three State powers (executive, legislative and judicial branches) in order to guarantee the legislative procedure, the implementation of institutional policies and the necessary modifications in Justice Administration. The representative of INADI's Board should be the articulator of the proposals contained in the National Plan against Discrimination, the new requirements put forward by any of the other organs (Technical Coordination, Federal Network, Follow-up and Supervision Forum) and the organs in charge of the effectivization of such policies, represented by representatives of the three powers in the Governmental Coordination Unit.

Among the main objectives of the Coordination Unit, the pursue of the following items is to be noted:

- Promote the necessary legislative changes proposed by the National Plan against Discrimination;
- Promote the institutional measures depending upon the Executive and Judicial branches proposed by the National Plan against Discrimination;
- Apply the necessary funding in order to fulfill the measures proposed by the National Plan against Discrimination;
- Elaborate a five-year schedule for the application of the measures proposed by the National Plan against Discrimination;
- Inform the Committee of Experts for Racial Discrimination (CERD), thorough the Ministry of Foreign Affairs, on the calendar and ways of fulfillment of the Plan;
- Receive and evaluate the suggestions and new proposals to fight discrimination put forward by the Permanent Forum of Follow-up and Supervision of the National Plan against Discrimination;
- Receive and evaluate the suggestions and new proposals to fight discrimination put forward by the Technical Expert Coordination of the National Plan against Discrimination, as well as the supervision of the monitoring taken up by the Coordination over discriminatory situation in the country;
- Receive and evaluate the suggestions to fight discrimination put forward by the Federal Network against Discrimination, as well as guarantee the application of the National Plan against Discrimination in the country.

A bi-monthly encounter periodicity is suggested. The Committee should be presided by the representative of the Cabinet of Ministers.

## **2. Federal Network of Fight against Discrimination**

The Federal Network of Fight against Discrimination should be composed by a representative of each Province, designed by provincial powers, ranked no lower than Subsecretary. It is suggested that such representation should be held by a representative of the Provincial Human Rights Secretariat or equivalent.

Among the main objectives, it should be noted:



- Provide for the effective application of the National Plan against Discrimination in the country's territory, collaborating in the provincial legislative adequation and in the institutional and financial actions needed for its application;
- Transmit to the Governmental Coordination Unit the peculiarities of each provincial situation and the main problems detected, prioritizing the specific problems that might not have been detected and/or included in the National Plan against Discrimination;
- Receive and transmit to the provincial powers the recommendations of the Technical Coordination (Group of Experts) in their Mission Reports, proving for its fulfillment;
- Collaborate in the organization of periodical visits by the Group of Experts to each of the locations considered to be important;
- Receive and evaluate the specific recommendations for each area proposed by the Permanent Forum of Follow-up and Supervision of the National Plan against Discrimination;
- Call for a Provincial Forum for the Fight against Discrimination in each province, including the most representative non-governmental organizations in order to know the specific problems of the region.
- A bi-monthly encounter periodicity is suggested. The Federal Network should be presided by the representative of the Senate of the Governmental Coordination Unit.

### **3. Permanent Forum of Follow-up and Supervision**

The Forum should be composed by representatives of organizations related to the fight against discrimination.

According to the discrimination areas established in the Plan, the representation within the Forum should be established in concordance with the Areas of Analysis, as follows:

- Age;
- Ethnic-National;
- Gender;
- Sexual Identity;
- Religion;
- Migrants and Refugees;
- Special Requirements;

- Political-Ideological;
- Particular Situations.

In addition, according to their important fight against discrimination, it is suggested to provide representation for human rights organizations.

Every civil society organization interested in being member of the Forum should be inscribed at INADI, making reference to its field of work. Such inscription shall be certified by INADI, having previously checked the effective existence of the organization and its references in the fight against discrimination and/or its representativity among the affected groups.

The Forum should be composed of four (4) representatives of the Area of Analysis Ethnic-National and two (2) representatives of the other Areas. This difference arises from the diversity of problems included in the first one (aboriginals, afrodescendants, collectivities, etc.) and of the plurality and massivity of the discrimination denounces suffered by these groups. In addition, two (2) representatives of human rights organizations should be included.

The representatives should be elected among those organizations inscribed for each Area of Analysis in the following way:

- 50% by rafftling before public authorities among all the organizations inscribed;
- 50% of the representatives elected by simple majority voting among the inscribed in each Area.

The duration of the representatives should last two years. In the case of the representatives elected by voting organizations, one reelection should be allowed. In the case of representatives, those organizations should be excluded from the possibility of reoccupying the post until all organizations have had the chance of executing representation.

Among the objectives, it may be noted:

- Evaluate the application levels of the National Plan against Discrimination;
- Take new surveys of the discriminatory situation in any area of the country;
- Propose new recommendations for the fight against discrimination to the Governmental Committee;
- Elaborate a Civil Society Report on the application of the National Plan against Discrimination, that should be presented to CERD.

A bi-monthly encounter periodicity is suggested. The Forum should be presided by the representative of INADI's Board of the Governmental Coordination Unit. Each meeting should produce a document that could be approved by simple majority and elevated to the Governmental Committee of Application and Follow-up of the National Plan against Discrimination.

#### **4. Technical Coordination of the Application and Follow-up of the Plan (Group of Experts)**

The Technical Committee should be composed of:

- Four (4) Independent Experts with academic background and experience of working on discrimination, racism and xenophobia. They should be selected by open competition and designed within INADI's structure, depending however upon the Governmental Committee of Application and Follow-up of the National Plan against Discrimination. Gender equity should be respected;
- One Expert designed by INADI among its officers;
- One Expert designed by the Secretariat for Human Rights among its officers;
- One Expert designed by the Direction for Human Rights of the Ministry of Foreign Affairs among its officers.

Among its functions:

- To monitor the discriminatory situation in the national territory by way of periodic trips to different locations in order to interview organizations and social movements, and to observe 'in situ', elevating Mission Reports of those visits to the Governmental Committee and to the Federal Network;
- To participate (voice but not vote) in the meeting of the Permanent Forum of Follow-up and Supervision of the National Plan against Discrimination, in order to include and analyze the recommendations proposed in such Forums and presented to the Governmental Committee;
- To elaborate an Expert Data Base on specific issues, that could be consulted by different organs of the application of the Plan when specific actions should be required;
- To elaborate specific projects for the application of the National Plan against Discrimination, when required by the Governmental Committee;

- 
- To participate, when their technical opinion should be requested, in the meetings of the Governmental Committee.

A fortnightly periodicity in the meetings and a monthly visit scheme is suggested, besides extraordinary specific visits. The Technical Committee of Experts should design a Coordinator form among its members, who should serve an yearly period functioning as nexus with other organs of the application of the Plan. It is suggested that such function be alternately served by the seven (7) Experts of the Committee.

# VI | Annexes

- 1. Members of the Governmental Coordination Group*
- 2. Experts, collaborators, public officers and groups interviewed*
- 3. Missions in the country*
- 4. Notes on the National Plan against Discrimination*
- 5. About the authors*

# ANNEX 1

## Members of the Governmental Coordination Group 2001-2004

### **National Institute against Discrimination, Xenophobia and Racism (INADI)**

Enrique Oteiza  
Eugenio Zaffaroni

### **Governmental Cabinet of Ministers**

Marina Cortéz  
Guadalupe Valderrama

### **Ministry of Justice and Human Rights Secretariat for Human Rights**

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Ana González  
Bernardo Maresca

### **Ministry of Foreign Affairs, International Trade and Worship Human Rights Direction**

Horacio Basabe  
Leandro Despouy  
Gregorio Dupont  
Soledad Figueroa  
Laura Melina Fueguel  
Fabián Oddone  
Javier Pedrazzini  
Carlos Sersale di Cerisano  
Federico Villegas Beltrán

### **United Nations Development Program (UNDP)**

Natalia Aquilino  
Julián Bertranou  
Cecilia Caligiuri  
Giulia Perrone

## ANNEX 2

### Experts, collaborators, public officers and groups interviewed

#### Consulted Experts

Norberto Liwski – Expert member of the Committee on the Rights of the Child  
 Enrique Oteiza - President of the National Institute against Discrimination  
 Federico Villegas Beltrán - Director of Human Rights, Ministry of Foreign Affairs,  
 International Trade and Worship  
 Mario Yutzis - Expert member of the Committee against Racial Discrimination

Aczel, Iлона	Couto, Rodolfo
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Arceo, Enrique	Delfino, Silvia
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Barri, Horacio	Dillon, Marta
Beach, Bert	Druetta, Juan Carlos
Belli, Elena	Elizalde, Silvia
Bernal, Jorge	Eroles, Carlos
Bertola, Alfredo	Escudero, José Carlos
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Bouzón de Terzano, Emilia	Figari, Carlos
Buzzo, Néstor	Figueroa, Viviana
Camps, Sibila	Freda, Rafael
Canelo, Francisco	Garbulski, Edgardo
Cardos, Tomás	Giménez, Carlos
Ceriani, Pablo	Godachevich, Mariano
Chávez, Ana	Gómes, Miriam
Cloux, Osvaldo	Grinstein, Pablo
Contarini, Eugenia	Gutiérrez, Mabel
Correa, Violeta	Gutiérrez, Rosalía

Haddad, Horacio Munir	Policastro, Lucía
Lamadrid, María	Pomerantz, Daniel
Levy, Guillermo	Prieto, Roberto
Lischetti, Mirtha	Proietti, Ruben
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Margulis, Mario	Salgado, Carlos E.
Mata, Marita	Salgado, Juan Manuel
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Nedich, Jorge	Trincherro, Hugo
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Noufour, Hamurabi	Veinberg, Silvana
Oddone, Fabián	Villalpando, Federico
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Pochat, Enrique	

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Barral, Jorge	Drajer, Eliana
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Bertranou, Julián	Fueguel, Laura
Buliubasich, Catalina	García, Hugo
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Campos, Claudia	Lubo, Marta
Carpio, Jorge	Martínez, Luis
Carrizo, Alejandra	Mascietti, Hernán
Casin, Jorge	Moreira, Micaela
Dasso, Carlos	Núñez, Dina



Ordóñez, Clara	Silveras, Olga
Pechén D'Angelo, Ana	Tirachini, Blanca
Perrone, Giulia	Valderrama, Guadalupe
Porcar, María Luisa	Vukovic, Brenda
Roitman, Fanny	Worman, Guillermo
Serrudo, Adriana	

### Public Officers

- Mario Alesci – Defensor del Pueblo de la ciudad de Río Cuarto. *Córdoba*.
- Luis Amarilla – Secretario de Gobierno de la Municipalidad de Posadas. *Misiones*.
- Rubén Berteza – Subsecretario de Derechos Humanos. *Río Negro*.
- Enrique Camia – Presidente de la Comisión para Minorías Sexuales y Portadores de HIV, Secretaría de Justicia y Derechos Humanos. *Córdoba*.
- José Camilo Cardoso – Director General del Registro Nacional de Cultos.
- Remo Carlotto – Secretario de Derechos Humanos. *Buenos Aires*.
- Alicia Comelli – Subsecretaria de Seguridad Ciudadana. *Neuquén*.
- Concejales de la ciudad de Río Cuarto. *Córdoba*.
- Alfredo Cornejo – Ministro de Gobierno. *Mendoza*.
- Funcionarios del Ministerio de Gobierno, de Justicia, de Desarrollo Social y Salud. *Mendoza*.
- Funcionarios de Gobierno de la Provincia de Buenos Aires – Dirección del Registro Civil, Patronato de Liberados y Direcciones de las áreas de HIV, Capacidades Diferentes, Minoridad y Juventud. *Buenos Aires*.
- Luisa Galli – Coordinadora del Centro de Denuncias del INADI. *Buenos Aires*.
- Claudia García – Subsecretaria de Relaciones con la Comunidad, Ministerio de Justicia y Seguridad. *Mendoza*.
- Oscar P. Guillen – Secretario de Justicia y Derechos Humanos. *Salta*.
- Luis Jacobo – Ministro - Secretario de Estado. *Misiones*.
- Juan Carlos Jaliff – Vicegobernador. *Mendoza*.
- Luis Juez – Intendente de la ciudad de Córdoba. *Córdoba*.
- Norma Larralde – Directora de Derechos Humanos. *Neuquén*.
- Legisladores de la Provincia de Mendoza (Comisiones de Derechos y Garantías del Senado y de Diputados). *Mendoza*.
- Legisladores de la Provincia de Tierra del Fuego. *Tierra del Fuego*.
- Patricio Lembo – Legislador Provincial. *Tierra del Fuego*.
- Esteban Llamosas – Vicepresidente del INADI. *Buenos Aires*.
- Olga Martín de Hammar – Presidenta de la Comisión Tripartita de Igualdad

de Trato y Oportunidades entre Varones y Mujeres en el mundo laboral. Ministerio de Trabajo, Empleo y Seguridad Social. *Buenos Aires*

- Rodolfo Mattarollo – Subsecretario de Derechos Humanos. Ministerio de Justicia y Derechos Humanos de la Nación. *Buenos Aires*.
- Francisco Mugnolo – Procurador General de Cárceles. *Buenos Aires*
- Javier Pedrazzini – Dirección de Derechos Humanos. Ministerio de Relaciones Exteriores, Comercio Internacional y Culto. *Buenos Aires*.
- Claudia Prince – Directora Provincial de Igualdad de Oportunidades. *Buenos Aires*.
- Fabio Rey – Secretario de Gobierno. *Río Negro*.
- Esteban Rodrigo – Ministro de Gobierno. *Río Negro*.
- Alberto Rubio – Jefe de Delegación, Dirección Nacional de Migraciones. *Córdoba*.
- Sr. Jefe de Delegación, Dirección Nacional de Migraciones. *Misiones*.
- Sr. Defensor del Pueblo de la Municipalidad de La Plata. *Buenos Aires*.
- Héctor Stefani – Secretario de Gobierno, Municipalidad de Ushuaia. *Tierra del Fuego*.
- Aída Tarditti – Presidenta del Tribunal Supremo de Justicia. *Córdoba*.
- Blanca Tirachini – Defensora del Pueblo de la ciudad de Neuquén. *Neuquén*.
- Mercedes de Vergara – Presidenta del Comité de Elegibilidad para Refugiados. *Buenos Aires*.
- Pablo Wolaniuk – Jefe de Gabinete, Municipalidad de Ushuaia. *Tierra del Fuego*.

### Groups, Institutions and NGOs

- Agrupación de Veteranos de Guerra “2 de abril”. *Río Negro*.
- Área de Estudios Queer (Fundación Laboratorio de Políticas Públicas / Decanato de la Facultad de Filosofía y Letras, Universidad de Buenos Aires). *Buenos Aires*.
- Asamblea Permanente por los Derechos Humanos – APDH. *Nacional y Delegaciones Formosa, San Pedro (MIS), San Rafael (MZA) y Ushuaia (TdF)*.
- Asociación “AMILSA” (Sign lenguaje). *Mendoza*.
- Asociación “Crecer con Esperanza” – CRECES (Families in risk). *Río Negro*.
- Asociación “INCLUIR” (Children in conflict with the law). *Mendoza*.
- Asociación “Integrando” (Deaf). *Municipio de Malvinas Argentinas*.
- Asociación “Las Juanas y las Otras” (Women rights). *Mendoza*.
- Asociación “Los Sin Techo del Porvenir” (Communitarian support). *Formosa*.
- Asociación “No estarán solos” (Disabled). *Córdoba*.
- Asociación “Red de Vida” (Women rights). *Neuquén*.

- Asociación "Vida Infantil". *Mendoza*.
- Asociación Centro de Liberados. *Córdoba*.
- Asociación Civil "Católicas por el Derecho a Decidir" (Sexual health). *Córdoba*.
- Asociación Civil "Intilla" (VIH). *La Plata*.
- Asociación Civil "Lugar de Encuentro" (Children in street situation). *Formosa*.
- Asociación Civil "Puerta Cuba" (Communitarian support). *Formosa*.
- Asociación Civil "Relmu" (HIV). *La Plata*.
- Asociación Civil "Sembradores de Esperanza" (Communitarian support). *Formosa*.
- Asociación Civil de Integración Boliviana. *Mendoza*.
- Asociación contra la Discriminación Homosexual – ACODHO. *Córdoba*.
- Asociación de Ayuda al Niño Especial – ADANE. *La Plata*.
- Asociación de Consumidores. *Misiones*.
- Asociación de Ecologistas Mapuches. *Neuquén*.
- Asociación de Familiares de Víctimas – AFAV. *Mendoza*.
- Asociación de Jubilados y Tercera Edad. *Misiones*.
- Asociación de los Testigos de Jehová. *Buenos Aires*.
- Asociación de Mujeres Lesbianas Transgénero – AMLT. *La Plata*.
- Asociación de Mujeres Meretrices de Argentina – AMMAR. *Nacional y Delegaciones Córdoba, La Plata, Mendoza y Salta*.
- Asociación de Personas con Necesidades Especiales. *Misiones*.
- Asociación de productores del Bañado de la Estrella – APROBAE. *Formosa*.
- Asociación de Residentes Caboverdianos. *La Plata*.
- Asociación de Sordos. *Formosa*.
- Asociación de Trabajadores del Estado. *Buenos Aires*.
- Asociación de Trabajadores Desocupados. *Mendoza*.
- Asociación Defensora de Niños Víctimas de la Violencia. *Misiones*.
- Asociación Indígena de la República Argentina – AIRA. *Buenos Aires*.
- Asociación Israelita de Río Cuarto. *Córdoba*.
- Asociación Mapuche de la ciudad de Neuquén. *Neuquén*.
- Asociación Mutual Israelita Argentina – AMIA. *Nacional y Delegación La Plata*.
- Asociación por la Diversidad Sexual y Religiosa. *Buenos Aires*.
- Asociaciones de afectados por la represa de la Entidad Binacional Yacyre-tá. *Misiones*.
- Asociaciones de protección y asistencia de personas con necesidades especiales. *Neuquén*.
- ASOCIANA (Indigenous communities support). *Salta*.
- B'nai Brith Internacional. *Buenos Aires*.
- Barrios de Pié (Communitarian support). *Salta*.

- CARITAS. *Delegaciones Córdoba y Mendoza.*
- Casa del Discapacitado. *Mendoza.*
- Casita del Puente Afectivo (Children communitarian support). *Mendoza.*
- Central de Trabajadores Argentinos – CTA. *Nacional y Delegaciones Buenos Aires, Formosa, Mendoza, Misiones, Salta, Tierra del Fuego.*
- Centro de Estudios Legales y Sociales – CELS. *Buenos Aires.*
- Centro de Rehabilitación Integral de Formosa – CRIF. *Formosa.*
- Centro de Residentes Bolivianos. *Córdoba.*
- Centro de Residentes de Oruro. *Salta.*
- Centro de Residentes Paraguayos “Uy’á Rendá”. *Tierra del Fuego.*
- Centro Ecueménico (Protestants). *Córdoba.*
- Centro Paraguayo. *La Plata.*
- Centro Simón Wiesenthal – Latinoamérica. *Buenos Aires.*
- Círculo de No Videntes – CINOVI. *Formosa.*
- Clínica para pacientes con VIH-SIDA (Proyecto “Conciencia”). *Tierra del Fuego.*
- Club de Trueque. *Río Negro.*
- Comisión Coordinadora Provincial de Derechos Humanos. *Mendoza.*
- Comisión de Derechos de la Mujer. *Córdoba.*
- Comisión de Derechos Humanos – Universidad Nacional de Salta. *Salta.*
- Comisión de Género Iglesia Evangélica Luterana Unida “San Timoteo”. *La Plata.*
- Comisión de la Mujer – Universidad Nacional de Salta. *Salta.*
- Comisión de Políticas Penitenciarias. *Mendoza.*
- Comisiones de Fomento “Línea Sur” (Naupahuen, Aguada Guzmán). *Río Negro.*
- Comité de América Latina y el Caribe para la defensa de los derechos de la mujer – CLADEM. *Mendoza.*
- Comunidad Boliviana. *Cervantes (RN), General Roca (RN), Guaymallén (MZA), Ugarteche (MZA), Mendoza, Neuquén, Salta, Tierra del Fuego.*
- Comunidad Chilena. *Allen (RN), Cervantes (RN), General Roca (RN), Neuquén, Tierra del Fuego.*
- Comunidad fueguina. *Tierra del Fuego.*
- Comunidad Homosexual Argentina – CHA. *Buenos Aires.*
- Comunidad Indígena “Campo Chico”. *Salta.*
- Comunidad Indígena “La Loma”. *Salta.*
- Comunidad Indígena “Misión San Francisco”. *Salta.*
- Comunidad Indígena “Pichanal”. *Salta.*
- Comunidad Indígena “Río Blanco”. *Salta.*
- Comunidad Indígena Chorote “CCOPISA”. *Salta.*
- Comunidad Indígena Chorote “Km. 6”. *Salta.*

- Comunidad Indígena del Pueblo Mbyá Guaraní “Mbyá Apyteré”. *La Plata*.
- Comunidad Indígena del Pueblo Ona “Rafaela Ishton”. *Tierra del Fuego*.
- Comunidad Indígena del Pueblo Tupí Guaraní “Curajhi Vera”. *La Plata*.
- Comunidad Indígena del Pueblo Tupí Guaraní “Peñangatuna Opabe y Ba Año Malvina Pe”. *La Plata*.
- Comunidad Indígena Diaguita Calchaquí “Animaná”. *Salta*.
- Comunidad Indígena Guaraní “Aguaray”. *Salta*.
- Comunidad Indígena Guaraní “Arenal”. *Salta*.
- Comunidad Indígena Guaraní “Campo Blanco”. *Salta*.
- Comunidad Indígena Guaraní “Caraparí”. *Salta*.
- Comunidad Indígena Guaraní “La Bendición”. *Salta*.
- Comunidad Indígena Güentota. *Mendoza*.
- Comunidad Indígena Huarpe Guaytamani. *Mendoza*.
- Comunidad Indígena Huarpe. *Mendoza*.
- Comunidad Indígena Kolla. *Salta*.
- Comunidad Indígena Mapuche. *Neuquén*.
- Comunidad Indígena Pehuenche Mapuche. *Mendoza*.
- Comunidad Indígena Toba “Barrio Nam Qom (Lote 68)”. *Formosa*.
- Comunidad Indígena Toba “Misión Laishi”. *Formosa*.
- Comunidad Indígena Toba. *La Plata*.
- Comunidad Indígena Wichi “Aguaray”. *Salta*.
- Comunidad Indígena Wichi “El Algarrobo”. *Salta*.
- Comunidad Indígena Wichi “Km. 12”. *Salta*.
- Comunidad Indígena Wichi “Km. 14”. *Salta*.
- Comunidad Indígena Wichi “Km. 6”. *Salta*.
- Comunidad Indígena Wichi “La Mora”. *Salta*.
- Comunidad Indígena Wichi “Misión San Benito”. *Salta*.
- Comunidad Indígena Wichi “Tonono”. *Salta*.
- Comunidad Musulmana. *Mendoza*.
- Concejales del Municipio de Malvinas Argentinas (Individual case). *Municipio de Malvinas Argentinas*.
- Consejo Consultivo del Consulado General de Perú. *La Plata*.
- Consejo de Desarrollo de Comunidades Indígenas – CODESI. *Río Negro*.
- Consejo Interreligioso. *Mendoza*.
- Consejo Local de Discapacitados (General Roca). *Río Negro*.
- Consejo Municipal de la Discapacidad (Salta). *Salta*.
- Cónsul de Bolivia. *Mendoza*.
- Consulado General del Perú. *Córdoba, Mendoza*.
- Cooperativa agrícola de Lavalle. *Mendoza*.
- Cooperativa Boliviana “2 de Agosto”. *La Plata*.

- Delegación de Asociaciones Israelitas Argentinas – DAIA. *Nacional y Delegaciones Buenos Aires, Córdoba, Mendoza, Misiones y Salta.*
- Dirección de Desarrollo Social para la Discapacidad. *Salta.*
- Discapacitado motor (Individual case). *La Plata.*
- Docentes de Ciencias Sociales – Universidad Nacional de la Patagonia. *Tierra de Fuego.*
- Docentes de la localidad de San Pedro (Individual cases). *Misiones.*
- Docentes del Centro de Estudios del Magisterio. *Tierra del Fuego.*
- Docentes del Establecimiento Escolar N° 12 especializados en discapacidad. *Río Negro.*
- Docentes del Profesorado de Educación Especial – Universidad Nacional de Cuyo. *Mendoza.*
- Docentes del Profesorado de Educación Especial – Universidad Nacional de Formosa. *Formosa.*
- Encuentro Nacional de Mujeres, 2004. *Mendoza.*
- Encuentro Neuquino de Integración (Chilean migrants). *Neuquén.*
- Entidad de Microcréditos “Juntos”. *Mendoza.*
- Equipo de Pueblos Indígenas – EPI. *Formosa.*
- Equipo Nacional de Pastoral Aborígen – ENDEPA. *Formosa.*
- Equipo Técnico del Centro de Actividades para Personas con Discapacidad. *Tierra del Fuego.*
- Familiares de Detenidos y Desaparecidos por Razones Políticas y Gremiales. *Buenos Aires.*
- Familiares de discapacitados. *Córdoba, Río Negro y Tierra del Fuego.*
- Familiares de Víctimas – FAVIM. *Mendoza.*
- Federación Alianza Cristiana de Iglesias Evangélicas de la República Argentina – FACIERA. *Buenos Aires.*
- Federación Árabe Bonaerense. *La Plata.*
- Federación Argentina de Iglesias Evangélicas. *Buenos Aires.*
- Federación de Entidades Americano-Árabes – FEARAB América. *Nacional y Delegaciones Buenos Aires, Córdoba y Misiones.*
- Federación de la Confraternidad Evangélica Pentecostal – FECEP. *Buenos Aires.*
- Federación de Minoridad – FEDEM. *Mendoza.*
- Federación de Organizaciones Sociales Comunitarias (Grupo de jóvenes). *Formosa.*
- Foro por la Vigencia de los Derechos Humanos. *Córdoba.*
- Fundación “África Vive”. *Buenos Aires.*
- Fundación “Algarrobo” (HIV). *Salta.*
- Fundación “Fortunato Benítez” (Disabled - HIV). *Municipio de Malvinas Argentinas.*

- Fundación “Geiser” (Special sicknesses). *Mendoza*.
- Fundación “Reencuentros” (Addictions). *Tierra del Fuego*.
- Fundación “Resurgir” (Domestic violence). *Formosa*.
- Fundación “Vida Joven” (Children in street situation, disabled). *Mendoza*.
- Fundación EcuMénica de Cuyo. *Mendoza*.
- Grupo “El Área” (Sexual diversity). *Buenos Aires*.
- Grupo “La Fulana” (Sexual diversity). *Buenos Aires*.
- Grupo “NEXO” (Sexual diversity). *Buenos Aires*.
- Grupo “Puerta Abierta” (Sexual diversity). *Buenos Aires*.
- Grupo de Abuelos Narradores. *Mendoza*.
- Grupo de agricultores de Oberá. *Misiones*.
- Grupo de antropólogos especializados en la problemática indígena. *Misiones*.
- Grupo de artesanos. *Río Negro*.
- Grupo de desocupados. *Misiones y Tierra del Fuego*.
- Grupo de jóvenes desocupados (ex Fábrica Capolonio). *Tierra del Fuego*.
- Grupo de Mujeres Argentinas. *La Plata*.
- Grupo de Mujeres Formosa. *Formosa*.
- Grupo de mujeres gitanas. *Neuquén*.
- Grupo de Mujeres Positivas Unidas. *Mendoza*.
- Grupo de mujeres víctimas de maltrato familiar. *Tierra del Fuego*.
- Grupo de niños en situación de calle. *Río Negro*.
- Grupo de obreros de “Pinocamby” (San Pedro, El Dorado, San Vicente). *Misiones*.
- Grupo de ocupantes de tierras. *Río Negro*.
- Grupo de personas con necesidades especiales (Deaf). *Córdoba*.
- Grupo de ribereños relocalizados. *Misiones*.
- Grupo de travestis. *Mendoza*.
- Hermanas Adoratrices (Sexual workers). *Córdoba*.
- Hogar de niñas y mujeres golpeadas. *Misiones*.
- Hogar de niños “El Refugio” (Children derived from justice). *Misiones*.
- Hogar de niños “Pantalón Cortito”. *La Plata*.
- Iglesia Adventista del Séptimo Día. *Buenos Aires*.
- Instituto “Mujer y Familia”. *Misiones*.
- Instituto de cultura popular “INCUPO”. *Formosa*.
- Instituto de Estudios Comparados Sociales y Penales – INECIP (Children and adolescents in conflict with the law). *Córdoba*.
- Investigadores de la Universidad de Misiones. *Misiones*.
- Jardín “Mi Angelito” (Disabled children). *Mendoza*.
- Judíos Argentinos Gays – JAG. *Buenos Aires*.
- Liga Bonaerense de Diversidad Sexual. *La Plata*.

- Madres de Plaza de Mayo – Línea Fundadora. *Buenos Aires*.
- Médicos especializados en Salud Mental. *Río Negro*.
- Medidas alternativas para la minoridad – ACANYA. *Mendoza*.
- Minorías sexuales y personas viviendo con SIDA – CERTUS. *Córdoba*.
- Movimiento Agrario Misionero. *Misiones*.
- Movimiento Antidiscriminatorio de Liberación – MAL. *La Plata*.
- Movimiento de Muralistas Revolucionarte. *Mendoza*.
- Niños indocumentados (Individual case). *Salta*.
- Observatorio de Derechos Humanos – Foro de Organizaciones Sociales. *Formosa*.
- Organización Comunitaria “Camino y Vida” (Barrio Simón Bolívar). *Formosa*.
- Pastoral Aborígen. *Mendoza*.
- Pastoral Carcelaria del Obispado. *Río Negro*.
- Pastoral de Migraciones del Obispado. *Misiones, Neuquén y Río Negro*.
- Pastoral Penitenciaria. *Mendoza*.
- Pastoral Social del Arzobispado. *Córdoba*.
- Personal de seguridad (Individual case). *Municipio de Malvinas Argentinas*.
- Profesionales de salud de la localidad “Los Polvorines” (Individual case). *Municipio de Malvinas Argentinas*.
- Programa Social Agropecuario. *Formosa y Salta*.
- Programas Alternativos a la Desocupación. *Río Negro*.
- Red de Abogados por los Derechos Humanos. *Mendoza*.
- Red de Derechos Humanos. *Salta*.
- Red de Mujeres Platenses. *La Plata*.
- Red de Mujeres Solidarias. *Mendoza*.
- Red de personas viviendo con SIDA – REDAR. *Córdoba*.
- Red de Técnicas (Support for women). *Formosa*.
- Red Mayor La Plata. *La Plata*.
- Representantes de ONGs de promoción de Derechos Humanos. *Misiones*.
- Secretariado de Ayuda Cristiana a las Cárceles. *Buenos Aires*.
- Servicio de Paz y Justicia – SERPAJ. *Buenos Aires*.
- Sociedad de Integración Gay Lésbica Argentina – SIGLA. *Buenos Aires*.
- Society for International Development – Neatherland Chapter. *Buenos Aires*.
- Técnicos aeronáuticos (Individual cases). *Córdoba y Tierra del Fuego*.
- Unión de Colectividades de Inmigrantes de Córdoba – UCIC. *Córdoba*.
- Unión de Colectividades de Inmigrantes de Córdoba. *Córdoba*.
- Unión de Trabajadores Sin Tierra. *Mendoza*.
- Unión Sirio Libanesa. *Salta*.
- Vecinos de la localidad “Los Polvorines”. *Municipio de Malvinas Argentinas*.
- Veteranos de Guerra de Malvinas. *Buenos Aires*.



## ANNEX 3

### Missions in the country\*

#### ■ City of Buenos Aires

Since 2003, and until the termination of the Plan interviews with groups of discrimination victims, experts, public officials and other people related to the discrimination area were held in Buenos Aires. Most of the meetings took place Esther at the Ministry of Foreign Affairs or at INADI; while in other occasions, interviewees were visited at their working places by the Coordinator or members of the group. The persons and groups interviewed are to be found in Annex 2.

#### ■ Province of Buenos Aires

##### City of La Plata

*Dates. Members.* The mission took place on August 20, 2004. the visiting delegation was formed by Experts Lic. Daniel Feierstein, Lic. Norma Fernández, Dr. Horacio Ravenna and Lic. María Sonderéguer, this latter as Coordinator. In addition, Prof. Ruben Berteá, Lic. Miranda Cassino, Dra. Laura Fueguel and Dr. Fabián Oddone (Counsellor of the Ministry of Foreign Affairs) also took part in the activities.

*Characteristics.* The mission was prepared through various communications between the Coordination –with the special help from Prof. Berteá– and Lic. Claudia Prince, Equal Opportunities Provincial Director. Also, it was granted with the support of the Secretary for Human Rights, Dn. Remo Carlotto. The meeting in the city of La Plata were held at the facilities of the Provincial Institute of Public Administration. Due to the important amount of interviews and the schedule overlapping, the members of the group had to work divided in sub-groups.

\* Missions are ordered alphabetically. For information on the groups interviewed in each mission, please refer to Annex 2.

The dialogue with groups of persons victims of discrimination was intense. In addition, an extensive meeting with the representatives of the social areas of the Provincial Government, and presided by the Secretary for Human Rights, Dn. Remo Carlotto.

### **Malvinas Argentinas County (Los Polvorines)**

*Dates. Members.* The mission to the town of Los Polvorines (Malvinas Argentinas County, Province of Buenos Aires) took place on August 21, 2003. The delegation was formed by Lic. Javier Pedrazzini and Dra. Soledad Figueroa from the Human Rights Direction of the Ministry of Foreign Affairs; Lic. Ana González, Lic. Carlos González and Lic. Fernando Rinaldi from the Secretariat for Human Rights of the Ministry of Justice and Human Rights; Lic. Cecilia Caligiuri from the United Nations Development Program (UNDP); Lic. Dina Núñez (INADI) and Dr. Waldo Villalpando. In addition, a cameraman (hired by UNDP) was also present for part of the day.

*Characteristics.* The visiting delegation was received by INADI's Delegate, Dr. Luis Martínez, and a volunteer group that participated in the events. The meetings were held at the School "Corazón de Jesús", whose headmaster, Prof. Marta Lubo, was our hostess. Delegate Dr. Luis Martínez prepared in advance flyers announcing the visit and distributed invitations among persons, groups and associations related to social promotion. The delegation was interviewed by two local radios.

While several preparatory meetings were held in advance at INADI, the following working techniques were accorded:

- a) During the morning, previously arranged interviews with groups and persons were held. Lic. Pedrazzini, Lic. González and Dr. Villalpando acted as the mission's spokespersons: the objectives of the mission were informed and the interviewees were invited to expose their problems. The filling in of a volunteer and anonymous questionnaire was always suggested. In addition, although the meetings were recorded, the confidentiality option was given to all participants: nobody made use of this option. Since an ample dialogue was promoted, several conclusions and suggestions emerged.
- b) During the afternoon, the "focal group" technique was applied under the supervision of the Secretariat for Human Rights. A group of 35 to 40 persons was divided in two groups and the debate developed over "triggering" questions. Suggestions and conclusions were also achieved.

## ■ Province of Córdoba

### City of Córdoba

*Dates. Members.* The mission to the Province of Córdoba (cities of Córdoba and Río Cuarto) took place from May 26 to 29, 2004. The visit to the city of Córdoba has held between May 26-28 and the one to Río Cuarto on May 28-29. The delegation was formed by Experts Dr. Horacio Ravenna, Lic. María Sonderéguer y el Dr. Waldo Villalpando, this latter as Coordinator. In addition, Professor Enrique Oteiza, President of INADI, Dr. Esteban Llamosas, Vicepresident of INADI, Dr. Fabián Oddone, official form the Ministry of Foreign Affairs, and Prof. Ruben Berteza accompanied the mission to the Province.

*Characteristics.* The mission was prepared through a series of contacts with the President of Córdoba's Bar, Dr. Enzo Stivala, and a organizer designed by him, Dra. Clara Ordóñez. In addition, Prof. Ruben Berteza travelled in advance in order to arrange the final details of the mission. The meeting in the city of Córdoba took place on most occasion in the facilities of the Provincial Subsecretariat for Human Rights, placed in a historical site of the city. Due to the important amount of interviews and the schedule overlapping, the members of the group had to work divided in sub-groups. INADI's President and Vivepresident interviewed the Mayor of the city of Córdoba and the President of the Provincial Supreme Court of Justice.

The dialogue included victimized groups from the city of Córdoba and suburbs. Separatedly, two experts –Norma Fernández and Ana González– organized a seminar on "Anthropology and Discrimination" in the VII National Congress on Anthropology. In addition, some days later, an interview was held in Buenos Aires with Mr. Enrique Camia, President of the Sexual Minorities and HIV Carriers Commission, depending of the Human Rights and Antidiscrimination Direction of the Provincial Ministry of Justice.

### City of Río Cuarto

*Dates. Members.* The visit to the city of Río Cuarto took place on May 28-29, 2004. The delegation was conformed by Dr. Fabián Oddone from the Ministry of Foreign Affairs and Dr. Waldo Villalpando as Coordinator. INADI's Vicepresident, Dr. Esteban Llamosas, also participated in the mission.

*Characteristics.* The mission was prepared through several prior contacts with the Ombudsman of the City of Río Cuarto, Dr. Mario Alesci, and Dr. Esteban Llamosas. The meetings took place in the facilities of the Ombudsman and in other municipal facilities.

In addition to the interviews and because of the repercusion of the visit, a

great time was devoted to the promotion of the National Plan against Discrimination. A special conference was also held in the municipal auditorium.

## ■ Province of Formosa

### City of Formosa

*Dates. Members.* The visit took place between December 27 and 29, 2004. The delegation included Lic. Norma Fernández, as Coordinator, and Counsellor Dr. Fabián Oddone from the Ministry of Foreign Affairs. The encounters were arranged by Lic. Alejandra Carrizo, resident in the city of Formosa.

*Características.* The meetings were held at the Institute for Popular Culture (INCUPO), while in some occasions our interviewees were visited at their working places.

An interview with the Provincial Minister of Government, Dr. Elvio Borriani, was also held.

## ■ Province of Mendoza

### City of Mendoza

*Dates. Members.* The visit took place between June 30 and July 3, 2004. The delegation was composed by experts Lic. Daniel Feierstein, Lic. Norma Fernández, Lic. Ana González, Dr. Horacio Ravenna and Dr. Waldo Villalpando, as Coordinator. In addition, Dr. Federico Villegas Beltrán, Director of the Human Rights Direction of the Ministry of Foreign Affairs, and Lic. Julián Bertranou, United Nations Development Program (UNDO), also participated.

*Characteristics.* The mission was prepared through a series preparatory contacts with Lic. Fanny Roitman, Professor of the Faculty of Elementary and Special Education of the National University of Cuyo. As the Faculty's Dean, Mgter. María Luisa Porcar, gave her support for the visit, almost all the meetings took place at the offices of the Faculty. la Universidad Nacional de Cuyo. Due to the important amount of interviews and the schedule overlapping, the members of the group had to work divided in sub-groups.

In addition to the interviews with victimized groups, a half-day meeting was arranged with the Provincial Government social areas representatives. This meeting was presided by the Provincial Vicegovernor, Dr. Juan Carlos Jaliff. A similar session was held with members of the Provincial Parliament. A press conference was also held, while a TV interview and various other media contacts were established.

## ■ Province of Misiones

### **City of Posadas**

*Dates. Members.* The mission took place on June 4-6, 2003. The participants were INADI's Vicepresident, Dr. Esteban Llamosas; Lic. Javier Pedrazzini, from the Human Rights Direction of the Ministry of Foreign Affairs; Arq. Hamurabi Noufourri (INADI) and Dr. Waldo Villalpando.

*Characteristics.* The visit was programmed in two previous meetings with INADI's Delegate, Prof. María Graciela Franzen. We was our host in the city and a group of five volunteers collabotated in the work. Most of the meetings took plan in a special municipal area. Some interviews were held at INAD's Delegation and at the hotel lobby. Diverse contacts with local media were established. By the end of the mission, an interview was held with the Provincial Chief of Cabinet, Ing. Luis Jacobo.

## ■ Province of Neuquén

### **City of Neuquén**

*Dates. Members.* The mission took place on November 7, 2003. the delegation was formed by Lic. Ana González, from the Human Rights Secretariat; Lic. Javier Pedrazzini, from the Human Rights Direction of the Ministry of Foreign Affairs and Dr. Waldo Villalpando.

*Characteristics.* The mission was prepared through a series preparatory contacts with the Ombudswoman of the city of Neuquén, Lic. Blanca Tirachini. The visitors were coming from the city of General Roca, where a previous mission of the project took place. All the interviews with victimized groups were held at the facilities of the Ombudsman.

The meetings were held with representatives of discriminated groups. Separately, local and provincial authorities were also interviewed. In addition, a press conference was held.

## ■ Province of Río Negro

### **City of General Roca**

*Dates. Members.* The mission took place from November 4 to 6, 2003. The delegation was composed of INADI's Vicepresident, Dr. Esteban Llamosas; Lic. Ana González, from the Human Rights Secretariat; and Dr. Waldo Villalpando.

*Characteristics.* The visit was programmed in two previous meetings, followed by further contacts, with the Provincial Subsecretary for Human Rights, Prof. Rubén Berteá, and with Lic. Claudia Campos. Almost all the meetings took place at the Foundation “Ciudad de las Artes” of the city of General Roca. The dialogue with groups victims of discrimination was intense. Separately, a Cooperation and Technical Assistance Agreement was signed between INADI and the Provincial Secretariat of Government.

## ■ Province of Salta

### City of Salta

*Dates. Members.* The mission took place on September 22-24, 2004. The delegation was formed by Dra. Laura Fueguel, Dr. Horacio Ravenna, la Lic. María Sonderéguer and Dr. Waldo Villalpando, as Coordinator.

*Characteristics.* The visit was prepared through a series of contacts with Lic. Adriana Serrudo, and the support of the Dean of the Faculty of Humanities of the National University of Salta, Lic. Catalina Buliubasich. The meetings were held at the offices of the Dean. Due to the important amount of interviews and the schedule overlapping, the members of the group had to work divided in sub-groups.

The dialogue with discrimination victims and their representatives was intense. In addition, a meeting with the Provincial Secretary for Justice and Human Rights, Dr. Oscar P. Guillen, was held. Various contacts with local media were also established.

### Cities of Orán and Tartagal

*Dates. Members.* The mission, departing from the city of Salta, took place between September 23-24, 2004. The delegation was composed by Lic. Miranda Cassino, Lic. Norma Fernández (as Coordinator) and Dr. Fabián Oddone from the Ministry of Foreign Affairs.

*Characteristics.* The mission to the city of Orán was prepared through a series of previous contacts between Lic. Adriana Serrudo, Father José Auletta and Dr. Hernán Masciotti. The meetings took place at the local facilities of the National University of Salta. For the case of the mission in Tartagal, the visit was arranged with Sra. Olga Silveras and the meetings took place at CCOPIA Association. A visit to the indigenous community of “La Mora”, 5 km away from the city, was also arranged.

The dialogue with victimized groups, mostly indigenous, was intense. Interviews with local media were also held.

## ■ Province of Tierra del Fuego

### **Cities of Ushuaia and Río Grande**

*Dates. Members.* The mission took place between April 28 and May 1, 2004. The delegation was composed by experts Lic. Daniel Feierstein, Lic. Norma Fernández, Lic. Ana González, Dr. Horacio Ravenna, Lic. María Sonderéguer and Dr. Waldo Villalpando, as Coordinator. Two experts (Norma Fernández and Ana González) travelled to the city of Río Grande on April 30 to hold other interviews.

*Characteristics.* The mission was prepared through various contacts and interviews with INADI's Delegate, Lic. Guillermo Worman. The dialogue in Tierra del Fuego was made possible by visiting several locations of different institutions, bars and private houses of discriminated persons. Due to the important amount of interviews and the schedule overlapping, the members of the group had to work divided in sub-groups.

In all the cases, the dialogue with groups victims of discrimination varied according to the places where the meetings took place. In the city of Río Grande, indigenous groups and unemployed persons were interviewed. The Provincial Parliament was visited and an interview was held with Ing. Pablo Wolaniuk (Chied of Cabinet for the city of Ushuaia) and Lic. Héctor Stefani (Secretary of Government of the city of Ushuaia).

## ANNEX 4

### Notes on the National Plan against Discrimination

Preparation started in October 2001 when the former High Commissioner for Human Rights, Mrs. Mary Robinson, visited Buenos Aires. An Understanding Memorandum (Memorandum de Entendimiento) was signed between the Office of the United Nations High Commissioner for Human Rights and the Ministry of Foreign Affairs of Argentina. The High Commissioner expressed suggestions for the preparation of a National Plan against Discrimination that were adopted by governmental officials.

Since May 2002 the preparation of the National Plan against Discrimination was intensified with the active participation of governmental officials and technicians. In August of the same year the Secretariat for Human Rights organized a one-day course destined to professionals related to social areas of the government.

In 2003 several documents aiming at the promotion of the conclusions of the International Conference against Racism, Xenophobia and other related forms of Discrimination were elaborated and nation-wide research project was designed. This project was presented to national authorities as well as to the Office of the High Commissioner for Human Rights. From June 2003 the first missions in the country started (Provinces of Misiones, Buenos Aires, Río Negro and Neuquén), interviewing victimized groups, NGOs spokesmen, government officials and experts. Several documents, which served for the following research, were produced

After the confirmation of the Coordination and Experts, a new working dynamics was established from March 2004 (one month prior to effective installment of OHCHR's funding). Since then the group of experts and the Executive Coordination met weekly in dialogue reunions with special guests, on internal working sessions, in visits to different parts of the country and for preparing written documents. In addition, new missions in the country and interviews took place. The description of the work carried out by the group has been divided as follows:

- Reflection and self-preparation;
- Dialogue and debate with victimized groups, specialists and government officials, etc.;



- Missions to different areas of the country;
- Promotion;
- Plan design.

### **Reflection and self-preparation**

Each debate meeting was organized on the basis of the opinion of one of the expert, established as “trigger”. After the first four meetings a consensus over the terminology and standard approach on the issue was established. In addition, the working standards within both the interviews and the internal analysis were accorded. Diverse documents were studied in common (Durban’s Conference Conclusions, Santiago de Chile’s Conclusions, Swedish Action Plan, International Convention against Discrimination, etc.). This process was reinforced through meeting evaluations, debate over new issues and joint document reading. Written syntheses of each meeting were produced.

### **Dialogue and debate**

From the third session, the group decided to invite anti-discrimination specialists in various social areas in the aim to debate issues related to their fields. In addition, government officials from relevant social areas were consulted. These interviews took place weekly and were continued in different parts of the country. Annex 2 indicated the persons and groups interviewed throughout the preparation of the Plan.

### **Missions to different areas of the country**

As it was previously stated, during 2003 and 2004 diverse areas of the country were visited. Chronologically, the following places were visited: Province of Misiones (North-East, city of Posadas); Province of Buenos Aires – Malvinas Argentinas County (Buenos Aires’ second urban belt, town of “Los Polvorines”); Province of Río Negro (South-West, city of General Roca); Province of Neuquén (South-West Andean Region, city of Neuquén); Province of Tierra del Fuego (extreme South, cities of Ushuaia and Río Grande); Province of Córdoba (Center, cities of Córdoba and Río Cuarto); Province of Mendoza (West Andean Region, city of Mendoza); Province of Buenos Aires – Capital City (Center, city of La Plata); Province of Salta (North-West, cities of Salta, Orán and Tartagal); and Province of Formosa (North-East, city of Formosa). Interviews, places and dates are detailed in Annexes 2 and 3.

The terms of the visits were accorded with the region’s correspondent holding our confidence (e.g. INADI’s delegates, university professors, professionals with experience in human rights, etc.). The main objectives of the project were informed and, in accordance with the Executive Coordination, an agenda including a broad participation of sectors victims of discrimination,

NGOs, local authorities, specialists and technicians was set. In most of the cases, a “base” for the interviews was established, while in other occasions the group travelled directly to the places where the victimized groups lived.

At the beginning of each meeting, the members of the mission introduced themselves and invited the interlocutors to do the same. Afterwards, the objectives of the mission were briefly informed and an open dialogue over the suffered or observed discrimination problems was encouraged. The working techniques during the interviews varied from workshops, targeted interviews, visits to centers to open debate sessions. It was always pursued that our interviewees, in addition to exposing their problems, suggested or proposed constructive recommendations in order to solve the expressed difficulties. Confidentiality was always stressed, along with the written option for expressing opinions. Extended written reports of each visit were produced, resuming the dialogue and exposing proposals.

### **Promotion**

Even though we had no especial budget for promotion, diverse activities were held aiming at it. Briefly, the following must be noted:

- In every visited area, contacts with local media (press, radios and TV) were established. In many occasions, members of the group participated in panels or public conferences;
- An informative brochure was designed, synthetically exposing the objectives of the Plan and providing with information regarding the organizational structure;
- UNDP Communication Unit prepared an excellent logotype for the visualization of the Plan and possible of re-application during its implementation;
- The Plan’s web site –[www.plan-discriminacion.com.ar](http://www.plan-discriminacion.com.ar)– was elaborated and shall be periodically updated;
- During the month of September an extensive information release was distributed among Government areas, non-governmental organizations, universities, members of parliament and diverse personalities, reporting on the undertaken actions and inviting to support or make specific proposals.
- Throughout the country, the the Coordinator and experts were invited to many meetings to inform about the main issues related to the National Plan against Discrimination: Seminar on “Anthropology and Discrimination” (Córdoba, May 26, organized by two Experts of the National Plan within the VII National Anthropology Congress); Seminar “Human Rights and Discrimination” (Buenos Aires, August 26 and 27, organized jointly by the Secretariat for Human Rights and the Executive Coordination); XIX National Women Meeting (Mendoza, October 9-11); Workshop on “Public

Health Policy and Discrimination" (Brazil, December 1-3, 2004). The Executive Coordinator participated in other meetings following the invitation of local NGOs and lectured on the international and national background and implications of the Plan at Comahue University (Neuquén, October 15-16, 2004).

### **Plan design**

Almost from the beginning of our work, the final structure of the Plan was subject of an intense internal debate. It was established that the National Plan against Discrimination was to begin with an *Introduction* resuming the undertaken activities for its preparation, and continue with a chapter on the *International and National Background*, briefing the main international conventions and the state of the art in national legislation. For the presentation of the research, it was accorded to divide it in two parts: Diagnosis (that was to include Transversal Axis, Areas of Analysis and Institutional Fields) and Proposals (divided into strategic and of immediate action).

The election of the diagnosis areas was the outcome of an important debate. The conclusions of it are to be found in the *General Considerations on Discrimination*, describing methodological aspects and introductory reflections. Once the diagnosis fields were established, the experts and Coordination took on the responsibility of the initial drafting of each chapter. In such a way, each of the members of the group elaborated, according to their expertise, a preliminar draft. These were discussed in depth by the rest of the team and the findings in this book are the result of that consensus. Taking into account such procedure, we decided the chapters not to be signed, as long as the whole group was responsible. When specific contributions were asked for, they are indicated as foot notes.

All the proposals and recommendations are based and sustained not only in the activities held (interviews, analyses, researches, etc.) but mainly in the problems detected in the diagnosis. It has been of great importance for them to be clear, precise and concretely applicable.

As a contribution to INADI's Board, the group has prepared a brief document, exposed under the title *Application, Follow-up and Supervision Proposal*, suggesting the way of implementing the recommendations of this report. Our proposal aims at combining the efforts of State organ and civil society.

### **The way of working**

Lastly, several general reflections over the characteristics of our work must be pointed out.

*No political compromises*

The Memorandum of Understanding was signed in October 2001 between the Office of the United Nations High Commissioner for Human Rights and the Ministry of Foreign Affairs, under the De La Rúa Administration. After the political events that took place between the end of 2001 and the beginning of 2002, the preparation for the Plan recommenced by mid 2002, under the Duhalde Administration. However, the most active initiatives for the Plan took place in 2004 under the Kirchner Presidency. This sole fact shows that political changes did not affect continuity but rather tended to reinforce it.

This character was promoted by United Nations, that specifically demanded the experts “not to be political officials”. However, it did not mean to close the dialogue with the State organs interested in the development of the project. It is in this way that the presence and constant assistance received from members of the Ministry of Foreign Affairs, the Secretariat for Human Rights and INADI is to be understood.

This context submerged everyone involved in the Plan in a relative autonomous atmosphere regarding political or ideological issues. The positions of our interviewees – being them public or private institutions, State officers or mere citizens – were equally taken under consideration. However, none of them conditioned the opinions that are presented in this book. The working group has been sensible up to personal emotions, devoted time for all those sectors that wanted to be heard and took under consideration their proposals. Critiques, even the most aggressive or against our personal considerations, were transcribed with the highest fidelity.

*A broad dialogue as basis for the Plan*

United Nations support came along with the requirement for the Plan not to be a mere “product of cabinet” but rather the outcome of a wide investigation on victimized groups, their representatives and the social and political areas related to discrimination. This instruction was followed as far as possible. Throughout our work more than 300 interviews were held, devoting around one hour for each (please refer to Annex 2). The written resumes of these encounters will be placed at the web site: [www.plan-discriminacion.com.ar](http://www.plan-discriminacion.com.ar).

As it has been stated, the way of the dialogue varied. The matrice of the interview consisted in our presentation along with the brief explanation of the objectives. Then, our interviewees were asked to introduce themselves and begun talking about their problems. In general terms, a simple format was followed: a) suffered discrimination problems; b) person and/or institution responsible; c) constructive proposals.

However, this scheme varied according to the circumstances and styles of

our interviewees. For example, in Los Polvorines, the dialogue with the neighbours has held under the workshop technique. In other occasions the panel format was used, as in the Córdoba National Congress on Anthropology, the Seminar on Discrimination organized by the Human Rights Secretariat or the expositions for the officials of the Mendoza and Salta Governments. Interviews ended in "brain-stormings" usually with base organizations.

The dialogue within the group was also intense. In our working meetings it was usual for one of us to start the dialogue with a "triggering" issue, followed by an ample internal debate that was not always peaceful. External visits or other important meetings were also followed by the evaluation of the main conclusions and personal reactions. On the basis of this internal and external dialogue the Plan was built.

We are concious that many groups, probably too many, have remained ungeard. However, great efforts have been made to insure interviews with all and every group of affected people. Our visits and meetings turned into real "marathons": no person or group that wanted to talk with us, with or without appointment, was left aside. In addition, due to diverse reasons, other people that was invited to meet with the group was not able to do it.

#### *National scope*

Another of the requirements made for the preparation of the Plan was to "get out" of Buenos Aires and its suburbs, giving the rest of the country a proper scope in the research. As it has been stated, very different areas were visited and it is regrettable no to have been able to visit some more. Once again, the lack of resources made it impossible to enlarge the scope, even though the fulfilled investigation is quite remarcable given the short period of time that we had. Anyone that participated in our meetings, knows that we worked all the time and with very few resting moments. It was also frequent to work subdivided in order to be able to interview as many persons as possible.

#### *Overcoming casuistics*

Discrimination is labyrinthic. Usually, victimized persons express aggressive facts without linking them to other social issues. We guess that it must be something similar to what happens to a physician when listening to a patient explaining synthoms while thinking about the causes. In a project as this one, one is forced to listen to discriminatory facts while trying to overcome examples in order to discover causes and common patterns in discrimination. In such a way, we have made our best efforts to see a little further and that is what is reflected in the Diagnosis, integrated by the Tansversal Axis, Areas of Analysis and Institutional Fields.

*Proposal building*

As pernicious as excessive examples is the excessive "academicism" of the disperse critics. Even though we sometimes feel fascinated by some of our interviewees and their experiences, we have tried not to lose ourselves in technical researches that could be developed later. We have made great efforts in order to promote practical and reasonable paths, however not always easy ones.

On the contrary, we all know that we have to operate on a very complex socio-economical reality. As a consequence, we are not searching for magical solutions. We all know that discrimination is a deep-rooted process and that changes shall take patience. As we cannot ask for miracles, we try to signal broad orientations in terms of collaboration but not critics. That is why an almost obsessive character has been to ask our interviewees for concrete proposals. With them, we have tried to construct a long term project.

*Working style*

From the start we ordered our work in such a way as to not spoil any of the scarce time we had. We intended to report on all the research so as to provide for further investigations. During 2003, an informal working group of experts gathered periodically. Then, after March 2004 when the expert group was officially designated, we gathered every Wednesday in the city of Buenos Aires. We took turns for issues exposition and prepared written synthesis of all our meetings while several internal working papers have been produced (statistical data, international recommendations, etc.). In addition, our interviewees (to whom we thank for the dedicated time) were not only listened to but also their recommendations and suggestions were studied in depth. The visits and meetings in all the country were completely resumed in writing, as well as the proposals issued by our interviewees.

## ANNEX 5

### About the authors

#### Coordinator

**Waldo Villalpando** is a lawyer and has a PhD in Social and Judicial Sciences. He worked for over 20 years as United Nations International Officer and has intervened in multiple international emergency operations. As Director of Diplomatic Mission he served in Spain, Honduras and Italy, in addition to representative for the Holy See. He has published many articles and books related to human rights, among them *From Human Rights to International Penal Law*. His novel, *La paz es peligrosa*, was declared of cultural interest by the National Culture Secretariat. At the moment, he works as university professor in public and private institutions.

#### Experts

**Daniel Feierstein** graduated as sociologist (University of Buenos Aires). At present, he works as Co-Director of the Cultural Diversity Degree of the University of Tres de Febrero, and as lecturer in "Genocide Social Practices Analysis" at the University of Buenos Aires. He worked as General Coordinator at INADI. Among other books, in Spanish, English and Hebrew, he has published, *Seis estudios sobre genocidio*, *Tinieblas del crisol de razas* and *Hasta que la muerte nos separe*.

**Norma Fernández** is graduated in Literature (University of La Plata) and in Cinematography (University of Córdoba) and she has undertaken post-graduate courses in anthropology. She works as lecturer in Anthropology at the University of Córdoba. She has worked as journalist in newspapers and magazines and has produced several documentaries. Among her books, *Voces latinoamericanas*, *25 años después* and *Otro mundo es posible* are to be noted. At present she is member of the Institute of Studies and Learning Institute of the Argentine Workers' Central (CTA).

**Ana Isabel González** is Social Anthropologist. At present she works as National Director for Economical, Social, Cultural and Collective Incidence Rights at the Human Rights Secretariat of the Ministry of Justice and Human Rights. She worked as human rights observer, in charge of aboriginal affairs, in the United Nations Mission in Guatemala, being member of the writing commission of the Report on Historical Elucidation. She was General Coordinator of the National Institute of Indigenous Affairs (INAI) and has worked as investigator and lecturer in medical anthropology, gender and human rights.

**Horacio Ravenna** graduated as lawyer in the University of Buenos Aires. Along his career, he served as Extraordinary Ambassador for the Direction of Human Rights of the Ministry of Foreign Affairs, Member of the Buenos Aires Provincial Parliament and Consulter for the Human Rights Commission of the National Deputies Chamber. He is Lecturer in the Pérez Esquivel course on human rights at the University of Buenos Aires. Among his books, *Aproximación al concepto de la Desaparición Forzada* and *Derechos del Niño* should be noted. At present he is Vicepresident of the Permanent Assembly for Human Rights (APDH).

**María Sonderegger** is graduated in Literature (University of Buenos Aires) and achieved a DEA in Latin-American Societies Studies (Sorbonne). She is lecturer and investigator at the National University of Quilmes and works in the Pérez Esquivel course on human rights at the University of Buenos Aires. She investigates on collective memory and human rights and has many articles on these subjects published in Argentina, Chile, Brazil, France, Germany and USA. At present, she is Director of the Center for Human Rights "Emilio Mignone" of the University of Quilmes.

### **Assistant**

**Miranda Cassino** graduated as political scientist at the University of Buenos Aires. She has undertaken several courses on philosophy in Argentina and Spain. At present, she works as lecturer in modern political thought at the Faculty of Social Sciences (UBA) and is attending postgraduate studies on discourse analysis at the Faculty of Philosophy and Literature (UBA).