



## 人权理事会

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议程项目9

种族主义、种族歧视、仇外心理和相关不容忍行为：

《德班宣言和行动纲领》的后续行动和执行情况

## 对阿根廷的访问

## 非洲人后裔问题专家工作组的报告\* \*\*

## 概要

本报告载有非洲人后裔问题专家工作组 2019 年 3 月 11 日至 18 日访问阿根廷的调查结果。工作组在报告中介绍了目前的法律、体制和政策框架以及为防止阿根廷非洲人后裔面临的种族主义、种族歧视、仇外心理、非洲恐惧症和相关不容忍现象而采取的措施，强调了积极的事态发展和执行方面的差距。工作组说明了现状，强调了良好做法和查明的主要挑战，并提出了具体建议。

\* 因提交方无法控制的情况，经协议，本报告迟于标准发布日期发布。

\*\* 报告概要以所有正式语文分发。报告正文附于概要之后，仅以提交语言西班牙文分发。



## Annex

### Report of the Working Group of Experts on People of African Descent on its mission to Argentina

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## I. Introduction

1. At the invitation of the Government of Argentina, the Working Group of Experts on People of African Descent undertook a visit to Argentina from 11 to 18 March 2019. The members of the delegation were Michal Balcerzak (Chair), Sabelo Gumedze and Ricardo Sunga III.
2. During the visit, the Working Group assessed the human rights situation of people of African descent living in Argentina and gathered information on the forms of racism, racial discrimination, xenophobia, Afrophobia and related intolerance they face. The Working Group studied the official measures taken and the mechanisms intended to prevent structural racial discrimination and protect victims of racism, as well as responses to multiple forms of discrimination according to the concept of intersectionality. The Working Group visited Buenos Aires, Santiago del Estero and Santa Fe.
3. The Working Group met representatives of several central government ministries in Buenos Aires, including the Ministry of Foreign Affairs and Worship; the Ministry of Justice and Human Rights; the Ministry of Health and Social Development; the Ministry of the Interior, Public Works and Housing; the Ministry of Education, Culture, Science and Technology; the Ministry of Security; and the Ministry of Defence. It also met with representatives of the Secretariat of Human Rights and Cultural Pluralism; the National Council for the Coordination of Social Policies and the National Institute of Women; the National Institute of Statistics and Censuses; the Public Prosecutor's Office; and the Prison Ombudsman's National Office. It also met with representatives of the Office of the Federal Public Defender, and the Observatory of Human Rights of the Senate.
4. The Working Group met with various local government authorities in Buenos Aires and the provinces of Santiago del Estero and Santa Fe regarding human rights, education, health, employment, housing and culture, as well as judicial and law enforcement authorities in those locations. It also met with officials of the offices of the local Public Defenders. The Working Group also conducted a visit at a temporary holding facility in a police station in Buenos Aires. In all the cities that the Working Group visited, it also met a considerable number of Argentine citizens of African descent, as well as human rights activists, lawyers, academics and representatives of non-governmental organizations.
5. The Working Group thanks the Government of Argentina for its invitation and the authorities in the provinces of Buenos Aires, Santiago del Estero and Santa Fe for their support and cooperation during the visit. It thanks the Ministry of Justice and Human Rights and in particular the Secretariat of Human Rights and Cultural Pluralism and the Ministry of Foreign Affairs and Worship. The Working Group also extends its thanks to the United Nations agencies in Buenos Aires for their support for the visit. It would also like to express its appreciation to Afro-Argentine civil society in various parts of the country and appreciates the feedback from everyone who shared their views on the human rights situation of people of African descent in the country.

## II. Background: historical overview and population

6. Argentina is a federal State consisting of 23 provinces and the Autonomous City of Buenos Aires and including more than 2,000 municipalities. The provinces enjoy a significant level of autonomy. The federal Government coexists with local governments that have their own constitutions; their own executive, legislative (bicameral or unicameral) and judicial powers; manage their natural and financial resources; and organize their own elections. The national executive and legislative authorities are elected by direct vote every four years (the Senate every six years), with the possibility of being directly re-elected for a second term. In July 2016, Argentina commemorated 200 years of independence.
7. The arrival of the African population in Argentina can be divided into three periods: the first arrivals between the sixteenth and eighteenth centuries were Africans. The second wave of arrivals in the late nineteenth century through to the middle of the twentieth century were mostly immigrants from Cabo Verde in search of better conditions of life. The

third wave of arrivals, from the 1990s onwards, consisted of immigrants from the Congo, Ghana, Liberia, Mali, Nigeria, Senegal and Sierra Leone. Their arrival was due to economic reasons, combined with fears of political persecution. People of African descent also arrived from Latin American countries, such as Brazil, Colombia, Cuba, the Dominican Republic, Ecuador, Honduras and Peru during this phase.<sup>1</sup>

8. The harbour in Buenos Aires, at one time capital of the Viceroyalty of the Rio de la Plata, was the main entry point for Africans brought over as enslaved labour during the period of the transatlantic slave trade. As such, in 1810, black people represented one third of the population of Buenos Aires.<sup>2</sup> In Tucumán province, they represented 64 per cent of the population; in Santiago del Estero, 54 per cent; in Catamarca, 52 per cent; in Salta, 46 per cent and in Córdoba, 60 per cent, while recent studies show 40 per cent in Santa Fe.<sup>3</sup> By 1887 (during the intervening 77 years no municipal censuses recorded information on race), the process of disappearance was well advanced. By that year, Afro-Argentines had dropped to a mere 8,005 out of a total population of 433,375 or less than 2 per cent.<sup>4</sup> The decline is generally attributed to the wars during the period that marked the country's independence and protracted civil wars in the region; miscegenation; low birth rates among Afro-Argentines coupled with high mortality marked by a yellow fever epidemic in 1871; and the decline in the arrival of enslaved Africans following the abolition of the trade in enslaved persons.

9. However, such narratives have sought to perpetuate the long-standing invisibility and persistent structural discrimination against Afro-Argentines, people of African descent and Africans to the present day. The history and the contributions of people of African descent to Argentine society has been for the most part forgotten. As indicated by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Argentina in 2016, the history of discrimination and xenophobia in Argentina can be traced back to the country's beginnings in the construction of Argentine identity, built on the negation or subordination of minority groups (A/HRC/35/41/Add.1). As the great influx of European immigrants from the last quarter of the nineteenth century followed, the crime of the trade in enslaved Africans during the colonial period was erased from the institutional memory of Argentina. Few remember that people of African descent were at the forefront of the wars of independence and in the period immediately after. Furthermore, people of African descent worked tirelessly on the farms to grow the economy of Argentina. Enslavement was not fully abolished in 1813, as freed people were required to serve in domestic jobs or in the army for several decades. Research indicates that they had to wait until 1853 – and in Buenos Aires until 1860 – for abolition to bring to an end, at least on paper, centuries of slavery and servitude.<sup>5</sup>

10. Enslaved Africans and their successive generations have maintained collective cultural practices that have prevailed over time. Despite prohibition and stigmatization, those cultural manifestations, for a long time confined to the private sphere of Afro-Argentine families, such as musical expressions and dances including the *candombe*, *tango* and *milonga*, are yet to be recognized fully as their contribution to culture and national identity.<sup>6</sup>

11. The invisibility of people of African descent is being addressed at the policy and institutional levels, as the National Institute of Statistics and Censuses undertook a census

<sup>1</sup> See Gisele Kleidermacher, "Africanos y afrodescendientes en la Argentina: invisibilización, discriminación y racismo", *Revue Interdisciplinaire de Travaux sur les Amériques*, vol. 5 (2012).

<sup>2</sup> See Ministry of Education and Government of Buenos Aires, *Bicentenario 1810-2010: Memorias de Un País* (2010).

<sup>3</sup> Georg Reid Andrews, *The Afro-Argentines of Buenos Aires, 1800-1900* (Madison, Wisconsin, University of Wisconsin Press, 1980).

<sup>4</sup> Ibid.

<sup>5</sup> See Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo y Ministerio de Justicia y Derechos Humanos, "Argentina también es Afro", ch. 1, available from <http://inadi.gov.ar/contenidos-digitales/producto/argentina-tambien-es-afro/>.

<sup>6</sup> Ibid.

in 2010 that included a question relating to persons of African background, resulting in a source of official statistical data on Afro-Argentines for the first time in more than 100 years. While the 2010 census indicated an Afrodescendent population of 149,493,<sup>7</sup> civil society organizations are of the view that there are up to 2 million people of African descent in Argentina. The census indicated that almost half the population of African descent lived in the province and city of Buenos Aires, followed by the provinces of Entre Ríos, Santa Fe and Córdoba, among others.

### **III. Legal framework and steps taken for the protection of the human rights of people of African descent**

#### **A. Legal framework**

12. Argentina has ratified all the major international human rights treaties (see A/HRC/WG.6/28/ARG/2, annex).<sup>8</sup> Following the constitutional reform, under article 75, paragraph 22, of the revised Constitution of 1994, international human rights instruments have the same rank as all other constitutional provisions and prevail over national and provincial law.

13. In terms of domestic legislation, the Law on Discriminatory Actions (No. 23.592), adopted in 1988, is the main piece of legislation for combating racism and discrimination. It provides the basis for combating different manifestations of discrimination in Argentina. Discriminatory acts or omissions are determined by the Law on the basis of race, religion, nationality, ideology, political or trade union opinion, sex, economic position, social condition or physical characteristics and race is considered an aggravating circumstance to a crime. Law No. 23.592 increases by one third the minimum and by one half the maximum of the penal scale for any crime under the Penal Code or complementary laws, when it is committed as a means of persecution of or hatred for a race, religion or nationality, or with the object of destroying a national, ethnic, racial or religious group in whole or in part.<sup>9</sup>

#### **B. Institutional and policy measures**

14. The Ministry of Justice and Human Rights is the State agency responsible for promoting public policies designed to protect, establish and guarantee human rights. The Secretariat of Human Rights and Cultural Pluralism and the National Institute against Discrimination, Xenophobia and Racism work within the Ministry to strengthen public policies for combating discrimination in all its forms. Combating discrimination in general and racism in particular is one of the main objectives of the Institute and it undertakes training programmes, workshops, seminars and events in different parts of the country, and disseminates awareness-raising information materials. It receives complaints about discrimination and provides assistance to persons who have suffered it. Complaints are received about all types of discrimination on any basis (including ethnicity, nationality, religion and sex) and in any situation (for example, workplace, education and health care). Assistance to persons who have been discriminated against consists fundamentally of counselling and free legal advice. The Institute is not empowered to punish or act in the role of law enforcement, but rather it is mainly a consultative and advisory agency. Nevertheless it is recognized as a specialized expert, its technical opinion reports are used as determining

<sup>7</sup> The census of 2010 indicated that the concept of Afrodescendant is related to “being a descendant of Africans brought as slaves to Argentina, being an African or a descendant of Africans, having black ancestors, being or considering oneself black or Afro-Argentine, or being Africans in the diaspora, among others”. See *Censo Nacional de Población, Hogares y Viviendas 2010. Censo del Bicentenario Resultados Definitivos, serie B, No. 2, Tomo 1*, p. 40.

<sup>8</sup> Available at <http://lib.ohchr.org/HRBodies/UPR/Documents/Session28/AR/A.HRC.WG.6.28.ARG.2.Annex.docx>.

<sup>9</sup> See Ley 23.592 – Actos Discriminatorios (1988), available from <http://servicios.infoleg.gob.ar/infolegInternet/anexos/20000-24999/20465/texact.htm>.

elements at the moment of passing sentence and it intervenes ex officio in different types of cases, such as amicus curiae or as a complainant before criminal justice.

15. In 2001, the Government of Argentina committed to integrating the conclusions of the Durban Declaration and Programme of Action into a national plan of action against discrimination.<sup>10</sup> In line with that commitment, the National Institute against Discrimination, Xenophobia and Racism developed a national map of discrimination in order to collect, analyse and disseminate statistical data at national and local level on the subject. The first edition of the map was made between 2007 and 2009 and the second edition in 2013. Both editions were based on a survey conducted nationwide. The Working Group was informed that field work was being carried out for the new edition in order to have the preliminary statistics for the end of 2019. The new edition will allow a comparison between 2013 and current data. In 2011, the Institute set up the Directorate for the Promotion and Development of Anti-Discrimination Practices in order to promote and implement actions that would make it possible to eliminate discriminatory behaviour. The Institute has also signed cooperation agreements with the Council of the Judiciary of the City of Buenos Aires and with the Buenos Aires Penitentiary Service to work on the eradication of violence and discrimination. The establishment of a number of institutions at the national and provincial levels, including the Office of the Federal Public Defender, branches of the Institute and the local offices of the Public Defender, are also important initiatives for combating racial discrimination.

16. Argentina launched its National Human Rights Action Plan (2017–2020) in December 2017. According to the Government, the plan is based on international commitments made by the State and the 2030 Agenda for Sustainable Development. Its pillars are inclusion, non-discrimination and equality; public security and non-violence; memory, truth, justice and reparation policies; universal access to rights and civic culture; and commitment to human rights. The action plan outlines specific actions to be carried out in order to make visible the Afrodescendent community under the International Decade for People of African Descent (2015–2024). They include ministerial commitments for the visibility of communities of people of African descent and the coordinating role of the Secretariat of Human Rights and Cultural Pluralism to promote the International Decade. The National Institute against Discrimination, Xenophobia and Racism works with the Secretariat of Human Rights and Cultural Pluralism to promote the International Decade and develop and carry out campaigns of awareness and empowerment of the Afrodescendent community.<sup>11</sup>

17. The Working Group welcomes the initiatives undertaken by the Government to combat racism, racial discrimination, xenophobia and related intolerance and in particular its work to develop a national Afrodescendent programme and action plan to implement the International Decade for People of African Descent. Decree No. 658/2017 calls for coordination between the administrative units of the executive branch to develop a programme of activities under the International Decade. The action plan consists of four components: recognition of rights through activities that guarantee access to and education about equality, non-discrimination and awareness; strengthening access to justice through training for public agents and the security forces; access to development, understanding the fight against poverty, access to education, employment and health; and strengthening of civil society organizations. Within these components are, inter alia, provisions for scholarships in education; incorporation into the educational curricula of the historical facts related to enslavement, the transatlantic slave trade and colonialism; quotas in employment; a platform for dialogue with organizations of people of African descent; anti-discrimination

<sup>10</sup> See *Towards a National Plan against Discrimination: Discrimination in Argentina* (Buenos Aires, National Institute against Discrimination, Xenophobia and Racism, 2005), pp. 12 and 13.

<sup>11</sup> See publications of the National Institute against Discrimination, Xenophobia and Racism, “Argentina también es afro”; available from <http://inadi.gob.ar/contenidos-digitales/producto/argentina-tambien-es-afro/>; “Afrodescendientes: guía temática”, available from <http://inadi.gob.ar/contenidos-digitales/producto/guia-afrodescendientes/>; and “Racismo y Xenofobia. Hacia una Argentina intercultural”, available from [www.inadi.gob.ar/contenidos-digitales/wp-content/uploads/2016/03/racismo-y-xenofobia-hacia-una-argentina-intercultural.pdf](http://www.inadi.gob.ar/contenidos-digitales/wp-content/uploads/2016/03/racismo-y-xenofobia-hacia-una-argentina-intercultural.pdf).

awareness-raising campaigns; training for public and law enforcement officials; and inclusion of places of historical importance of the Afrodescendent community as historical and cultural heritage.

18. The plan also includes provisions for a quota of microcredits for undertakings proposed by women of African descent; the incorporation of an intercultural approach; and specific incentives for the promotion of Afrodescendent culture. Similarly, it includes the creation of an interministerial body for the implementation of the national programme of action, dialogue with social organizations of Afro-Argentines and promoting replication in different regions of the country with different specific themes aimed at achieving territorial decentralization. Under the plan, agents and civil servants and national, provincial and municipal authorities, mainly from the educational and health fields, will be trained through virtual/semi-classroom courses. The plan envisages the development of a national anti-discrimination campaign jointly with the National Institute against Discrimination, Xenophobia and Racism and to make the existence of African religions visible through dialogue with religious communities and civil society. It also includes training for the security forces and municipal officials on the existence of stigmatizing racial profiles.

19. The National Directorate of Pluralism and Interculturality is designing public policies based on the programme of activities of the International Decade for People of African Descent, the International Convention on the Elimination of All Forms of Racial Discrimination and the Durban Declaration and Programme of Action. The Working Group notes that the Ministry of Education, Culture, Science and Technology is working to include in the school curricula educational content that addresses the African influence on Argentine history and national identity. Work is being done on material on the Afrodescendent community, which is accessible for teacher training at the federal level on the portal Educ.ar. In addition, there is coordination between the National Directorate of Pluralism and Interculturality and the National Directorate of Educational Scholarships to facilitate the access of the population of African descent to the scholarships supported by the Ministry. According to information provided by the Government, people of African descent have already accessed 1,115 youth scholarships at the initial, primary and secondary levels. There is also a campaign for the visibility of the population of African descent through various communication pieces on digital platforms.

20. Law No. 26.827 established the National System for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Its implementing regulations were issued in April 2014 in decree No. 465/2014. In July 2014, within the Ministry of Human Rights and Cultural Pluralism, a unit was set up to implement the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The unit works with all branches of the State and civil society.

21. Since December 2015, the programme “Justice 2020” has been in place.<sup>12</sup> It serves as a digital platform of the Ministry of Justice and Human Rights and is based on citizen participation. It is a space for dialogue, calling upon all to make proposals, share ideas and know the projects that are under way to improve access to justice by providing a space for institutional and citizen dialogue, with the aim of creating a transparent and trustworthy justice system. The Ministry of Justice has also initiated a project to combat prejudice and racial stigmatization on the theme of visibility and the promotion of rights of the Afrodescendent community.

22. Fulfilling one of the commitments assumed in the National Human Rights Plan 2017–2020, Argentina is commencing implementation of a human rights recommendations monitoring system. That is an important step towards the achievement of the sustainable development goals that the United Nations proposes in the 2030 Agenda for Sustainable Development. The system will allow the recommendations of international organizations and public policies that are carried out by the national State to be monitored to ensure compliance. In addition, it will provide updated information on all provinces for the preparation of periodic reports, in order to account for the evaluation of the commitments assumed with the international human rights system.

<sup>12</sup> See Ministry of Justice website on Justice 2020, available from [www.justicia2020.gob.ar/](http://www.justicia2020.gob.ar/).

23. By Law No. 26.852 (2013), 8 November was designated National Day of Afro-Argentine Peoples and African Culture. The date was chosen to honour the memory of María Remedios del Valle, a woman of African descent who joined General Manuel Belgrano's army, fought during the wars of independence and was given the rank of captain for her courage on the battlefield. The Law represents an effort to recognize and correct history so as to restore the symbolic and cultural legitimacy of the role played by people of African descent in establishing the national identity of Argentine society. Since 2016, work has been done to pay homage to the important role of the Afro-Argentine community in the independence process. On the occasion of the celebration of the Bicentennial of Independence in the province of Tucumán in 2016, recognition events were organized along with the Ministry of Defence, recognizing the figure of Maria Remedios del Valle and all people of African descent who contributed to the independence of Argentina. The Working Group welcomes the designation of 8 November as the National Day of Afro-Argentine Peoples and African Culture. Similarly, by Law No. 4.355, 25 July was designated as the Day of the Afro Woman within the city of Buenos Aires; the Directorate General of Women, Ministry of Social Development of the city of Buenos Aires, is entrusted to develop different activities in the framework of the celebrations. The Working Group was also informed that the first national congress of people of African descent will be organized by the State in August 2019. The Working Group also welcomes ongoing civil society initiatives to promote the International Decade for People of African Descent in Argentina.

24. The Working Group welcomes the commitment to include the Afrodescendent variable in the general questionnaire of the national population, household and housing census, to be carried out in the year 2020, to gather disaggregated data about the population in the country through the National Institute of Statistics and Censuses with the participation of people of African descent.

25. During its visit, the Working Group observed several good practices which should be replicated: in the city of Buenos Aires, the work of the Directorate of Assistance to Persons Deprived of their Liberty under the local Ministry of Public Defenders; in Santiago del Estero, the work by the provincial government with communities on the recognition of Afrodescendent identity and history, and the inclusion of related content in the curricula of the different levels of education; in Chascomus, recognition of La Capilla de los Negros as an important historical site; and in Santa Fe, the mobile clinics run by the office of the provincial Ombudsperson to reach rural communities. There is also a migrant orientation centre designed as a space for meeting and attention, aimed at all the communities that make up the population plurality of the city of Buenos Aires. It seeks to draw together the activities of State organizations and civil society organizations, and promote actions that meet the needs and demands of migrants and refugees.

26. The Observatory of Human Rights in the federal Senate was created with the purpose of contributing to the development of legislation that guarantees the full recognition and effective protection of human rights in Argentina, in accordance with the Constitution and the international treaties to which the State has adhered. With that purpose, it promotes and articulates spaces for dialogue and cooperation between the national legislative power, public agencies, academic and technical institutions and civil society organizations, in order to strengthen respect for and the exercise of human rights. The Observatory also provides legislators with the conclusions and recommendations emanating from the country's participation in the universal periodic review.

## **IV. Manifestations of racial discrimination**

### **A. Invisibility, criminal justice and negative stereotypes**

27. The Working Group was informed that the denial of the existence of Afro-Argentines is linked to the country's view of itself "as a country of Europeans". The social model of Argentina built in the nineteenth and twentieth centuries was Eurocentric and disregarded the input of people of African descent to Argentine culture and social structure.



Time and again, the Working Group heard reports of structural discrimination focusing on all non-white poor people in Argentina and in particular people of African descent. Democracy has brought to light issues that were hidden during the dictatorship, including the history of people of African descent. The Government is making efforts to create a culture of human rights and has started work to address the lack of recognition, justice and development. It is critically important that all work to address the situation of people of African descent is done in partnership with them, with civil society and with a human rights-based approach.

28. Argentina must come to terms with the reality that people of African descent are a group living in a situation of vulnerability and thus deserving of special measures. They have faced numerous difficulties; however they are becoming organized, with a number of networks and civil society organizations promoting their human rights. Exclusion has been their lot for so long that they need support from international organizations. In particular, the Working Group noted the lack of representation of people of African descent in the Government; except in one instance, the Working Group did not meet a single person of African descent in its extensive meetings with the authorities. The Working Group notes with concern that underrepresentation could perpetuate racial bias and stereotypes of people of African descent only as migrants and not valuable contributors to Argentine society.

29. The Working Group found that the Spanish word “negro” carries a predominantly negative connotation in Argentina, associated with discrimination based on race and socioeconomic status. The Working Group was informed that expressions such as “working like a negro”, “work in black”, “look at the black”, and “girl/boy from the slums” are considered offensive and derogatory by Afro-Argentines. The National Institute against Discrimination, Xenophobia and Racism stated that it had designed a manual for communicators that is specific to the population of African descent, in order to promote inclusive communication, make use of language as a tool to promote rights and work and contribute to the eradication of negative connotations regarding the word “black”.<sup>13</sup> Civil society also reported racist portrayals of people of African descent in the media. Representatives of communities of African descent reported to the Working Group that lack of representation, coupled with an absence of positive references or role models in the media and culture, led to further invisibility.

30. Despite having a strong legal, policy and institutional framework to combat discrimination, Argentina faces shortcomings in the implementation of protection measures against racial discrimination. The experiences of people of African descent with law enforcement indicate the prevalence of structural discrimination. As reported by civil society, racial profiling of Afro-Argentines, people of African descent and Africans is prevalent among law enforcement agents. Negative stereotypes of people of African descent to the effect that they are dangerous, violent criminals involved in drug trafficking and sex work have contributed to excessive policing, resulting in selective and discretionary mechanisms for carrying out arbitrary detentions and investigations. Excessive policing is reportedly manifested in the heavy presence and vigilance on the part of the security forces in popular areas mostly inhabited by “non-whites”; an excessive number of non-white people in places of detention, both in pretrial detention centres and in penitentiaries; and excessive use of force by the security forces, a phenomenon known as “easy trigger”. In that connection, the lack of representation of people of African descent in the police is also of particular concern in the light of widespread racial profiling and represents a risk of potential police-community tensions.

31. Such disproportionate use of force against people of African descent can turn to deadly violence. That was the story of a Uruguayan national of African descent, José Delfin Acosta Martínez, who died in Argentine police custody on 5 April 1996. On 11 July 2013, the Inter-American Commission on Human Rights found admissible the complaint of his family against Argentina about the arbitrary arrest, detention, torture and death in police

<sup>13</sup> See “Manual de comunicación inclusiva: buenas prácticas para comunicadores y comunicadoras. Afrodescendientes”, available at [https://adsdatabase.ohchr.org/IssueLibrary/INADI\\_Buenas%20Practicas%20para%20comunicadores.%20Afrodescendientes.pdf](https://adsdatabase.ohchr.org/IssueLibrary/INADI_Buenas%20Practicas%20para%20comunicadores.%20Afrodescendientes.pdf).

custody of Mr. Acosta Martínez.<sup>14</sup> The Working Group is equally concerned about the death of Massar Ba, a Senegalese human rights defender, in 2016. The questions surrounding his death remain unanswered and the circumstances of his death demand clarification. The Working Group understands that the investigation is still ongoing and would like to continue receiving updates about the case.

32. The Working Group recognizes the efforts made by Argentina in relation to the human rights of migrants. The adoption of Migration Law No. 25.871 (2004), which regulates the country's migration policies, has been internationally recognized for its strong human rights approach to migration, integrating foreigners and nationals on an equal footing, guaranteeing foreigners core rights, including due process of law in all migratory procedures, and promoting the regularization of irregular migrants as a principle, rather than making them subject to administrative detention and expulsion measures. Recently the Minister of Security, the Minister of the Interior and the Director of the National Migration Directorate have announced the imminent amendment of the Migration Law and its regulatory decree No. 616/2010 through an emergency decree with a more rigid security perspective. Following the announcements of the amendment of the Migration Law, more than 130 migrant organizations, human rights groups, ecclesiastical movements and other civil society organizations have expressed the concern that this could imply a regression in the country's migration policy and have publicly exhorted the Government to maintain the human rights approach established by the Migration Law.

33. In 2013, provisions 01/2013 and 02/2013 of the National Migration Directorate established special regularization norms for Dominican and Senegalese nationals respectively, whereby autonomous employees duly registered by the Federal Administration of Public Revenue are taken into consideration. The programme remained valid for six months, during which temporary residence was requested by 2,200 Dominican nationals and granted to 2,000 of them. On 31 January 2017, Argentina implemented decree No. 70/2017 amending Migration Law No. 25.871 (2004), regulatory decree No. 616/2010 and Citizenship Law No. 346 (1879). Among various measures, the decree establishes a "special express expulsion procedure" and introduces "preventive detention" for migrants, which applies at any given time of the procedure (previously only applicable in the execution of a final expulsion). That potentially prepares the groundwork for the implementation of a migrant detention centre, publicly announced by the Argentine Ministry of Security and the National Migration Directorate.

34. The Working Group was informed that the Government was working with civil society organizations, together with the National Migration Agency and the National Commission for Refugees regarding a second migratory regularization of the Senegalese community. However, the Working Group notes with concern that decree No. 70/2017 modified the migration regime with a more restrictive migration policy, which is a concern. The Committee against Torture and the Committee on the Rights of the Child have requested Argentina to repeal the decree and the Committee on Economic, Social and Cultural Rights has expressed its concern about the barriers imposed on migratory regularization and access to social policies by the migrant population.<sup>15</sup> The decree strictly regulates the entry into and stay of foreigners in Argentine territory and establishes that the National Immigration Office may cancel the residence of any immigrant and order their expulsion if they have been convicted in Argentina or abroad of serious crimes, such as trafficking of arms, drugs, people or organs, but also for other crimes that may involve deprivation of liberty, such as street vending or transit infractions. Many African migrants work mostly in the informal sector, including sidewalk vending, which has exposed them to harassment by law enforcement agents.

35. In a situation where the stereotypical portrayal, in Buenos Aires and other cities, of migrants of African descent as dangerous, taking jobs from local people and responsible for insecurity in the country, the Working Group was informed of the disproportionate targeting by the police of street vendors of African descent, most of whom are Senegalese.

<sup>14</sup> See report 36/13, petition 403-02.

<sup>15</sup> See CAT/C/ARG/CO/5-6, CRC/C/ARG/CO/5-6, para. 39, and E/C.12/ARG/CO/4, paras. 26–27.

Civil society representatives reported notable police and judicial persecution of street vendors, particularly those of Senegalese origin in Buenos Aires, especially in the neighbourhoods of Flores and Once. “Police saturation” operations, which include members of the infantry corps, police officers armed with shields and helmets and motorcycle police, have been mobilized to prevent the street vendors setting up their stalls and disperse the neighbours who come to their aid. Similar operations were also reported in La Plata, Province of Buenos Aires, and in Córdoba city. Daily operations have also reportedly been carried out jointly by the city police and the Ministry of Environment and Public Space of the city of Buenos Aires, where inspectors who do not wear uniforms or carry identification allegedly intimidate the vendors to withdraw, under threat of action by the police. This has caused countless episodes of fights and violent struggles that result in injuries to the street vendors, in addition to violent and arbitrary arrests. The vendors are reportedly criminalized for misdemeanours, such as resisting arrest or violation of the Trademark Law, and subjected to police violence, arbitrary detention and confiscation of goods. Those with irregular immigration status are in a more vulnerable situation. The outcome is always the same: following warrantless arrests and detention, the street vendors are eventually released by the prosecutor or judge. This practice is repeated as a tool of harassment without any accountability.

36. Starting in 2018, the programme against institutional violence of the Office of the Public Defender was intensified, monitoring and documenting the repeated arrests of street vendors in Buenos Aires. The manner of those arrests could imply that the Buenos Aires police are carrying out arbitrary arrests of street vendors. According to the information received, such arrests often involve violence, resulting in injuries, in some cases severe, such as broken bones or deep cuts. In cases in which vendors are injured, they are often accused, in addition to offences under the Trademark Law, of the crime of resisting authority under article 239 of the Penal Code. According to the allegations received, that type of accusation would have the function of justifying violent police action against those resisting arrest, or the seizure of their merchandise.

37. Sellers of Senegalese origin and other street vendors detained in the context of such operations have alleged that the merchandise confiscated during their detention by the police is never inventoried in its entirety and mostly never returned or sometimes returned in part. The Working Group noted with concern the use of criminal law tools to justify police violence in a situation that should be limited to verifying a minor infraction for improper occupation of public space for a commercial activity without the corresponding permits. The Working Group was informed that arrests for violation of the Trademark Law increased markedly as of mid-2018, after the competency for such arrests was transferred in March 2018 from the State to the judicial authority of Buenos Aires, within the framework of a progressive programme of transfers of jurisdiction.

38. The monitoring and documentation of this situation by the Office of the Public Defender reveals a pattern that indicates that the arrests of street vendors of Senegalese origin for violation of the Trademark Law are not validated by the criminal justice system of Buenos Aires. In spite of this, the procedures for the seizure of merchandise and for detention continue, with a suggestion of arbitrariness, both in the laying of charges and in the selection of the persons at whom police action is directed. That analysis is based on possible discrimination due to immigration, ethnic origin, poverty and other reasons of vulnerability. Detention can lead to swift expulsion from Argentine territory, with little chance of defence, owing to the “special express expulsion procedure” established under decree No. 70/2017.

39. The Government acknowledges receiving complaints of institutional violence and racism faced by the street vendors of African descent and states that it has introduced promotion and protection actions in various municipalities of the Province and City of Buenos Aires, through dialogue with municipal and provincial officials. The Working Group notes that these efforts need to be further enhanced and supported by punitive measures, so that perpetrators are sensitized against racial bias, discrimination and the excessive use of force against people of African descent.

## B. Disparities in access to education, health, housing and employment

40. The Working Group noted that structural discrimination was impeding Afro-Argentines in the realization of their economic, social and cultural rights. It learned of a multitude of human rights concerns, including violations of the right to an adequate standard of living; to housing and water; to land tenure; to health care; to education; and to security and justice. The infrastructure, including access to roads and adequate transportation, remains an issue in many areas, both urban and rural.

41. The Working Group was informed that the largest number of people who claim to have suffered and/or witnessed discrimination were in the education sector, according to the information in the national map of discrimination prepared by the National Institute against Discrimination, Xenophobia and Racism in 2013. Those who had suffered from racist practices perceived that in large part (76 per cent) such practices took place in schools. The Working Group notes the ongoing efforts by the Government to include in school curricula the history of the trade in enslaved Africans and the history and contribution of people of African descent in Argentina. Through the programme “Educating in interculturality”, training is provided to national, provincial and municipal public officials and security forces on the promotion of the rights of people of African descent, of intercultural dialogue and of their identity as Afro-Argentines, in order to raise awareness of the need for respect, inclusion and the fight against discrimination, racism and xenophobia. It also welcomes the virtual course entitled “Argentina, afro roots: visibility, recognition and rights of the Afrodescendent population” organized by the Secretariat for Human Rights and Cultural Pluralism. Nevertheless, the Working Group remains concerned that access to education is limited owing to poverty and discrimination. The National Education Law does not include in the list of educational priorities content regarding the contribution of people of African descent to national history, which has been one of their demands. The Working Group was informed that many children of African descent drop out of school early on.

42. People of African descent are often discriminated against in access to employment. The harmful effects of structural and institutional racism in the world of work have a negative impact on the Afrodescendent community, in both the public and private sectors, significantly reducing their representation in the employment sector. To a large extent, people of African descent have been confined to the informal job sector, making them vulnerable to exploitation. Employment opportunities, especially in the rural areas, are very scarce. Migrants of African descent face further obstacles owing to difficulties in obtaining residence permits. A study has also indicated that not having a white skin exposes people, regardless of their educational level, sex and age, to unfavourable conditions in the labour market.<sup>16</sup> Given that many workers of African descent are working in the informal sector, the same racial hierarchy that guides the distribution of jobs means that many of them do not have the right to formal union representation. Many women of African descent work in different types of domestic service without access to the benefits of registered employment and representation. One exception is the Central Workers of the Popular Economy, a social organization that has incorporated informal workers, many of them street vendors of Senegalese origin.

43. An exploratory study by the International Organization on Migration on the socio-educational and socio-labour trajectories of migrants investigated the particular situation of the extraregional migrant population, specifically of those born in Haiti, Senegal and Ukraine. The study focused on the training and work experiences of those groups, in order to identify the barriers to and facilitators for inclusion in the educational and labour fields in Buenos Aires. The study allowed for the detection of two main means of inclusion that were expanded and displayed as strategies by extraregional migrants. One of them sought inclusion through educational insertion; the other by means of access to work. In addition, the study considered the challenge faced by State agencies in reference to the problem of how to eliminate segregation, exclusion and differentiation in access to education and work.

<sup>16</sup> See Pablo De Grande and Agustín Salvia, “Mercado de trabajo y condicionamiento por color de piel en grandes centros urbanos de la Argentina”, *Revista de Estudios Regionales y Mercado de Trabajo*, vol. 8 (2013).

One of the most important changes would lie in the transformation of the discriminatory views that still influence perceptions of people of African descent.

44. In 2018, the Pan American Health Organization launched a health plan for the youth of African descent in Argentina. The plan is the result of efforts to create spaces for dialogue that promote and facilitate social participation in actions related to the health and well-being of the different ethnic groups that coexist in the Americas. While the Working Group welcomes the universal health-care system in Argentina, it was informed that some people of African descent faced racial discrimination in accessing services. The Working Group was also concerned at the reluctance of migrants of African descent to access health-care centres and hospitals because of their non-regularized status in Argentina.

45. In Santiago del Estero province, Afro-Argentines are reported to be living in appalling conditions because of extreme poverty. The Working Group also learned that budgetary allocations for housing had declined, thus affecting Afro-Argentines living there. The Working Group was informed that there was no specific provision for or focus on people of African descent in the housing policy and programmes of the province and that Afro-Argentines in San Felix were living in overcrowded houses.

### C. Multiple forms of discrimination

46. The Working Group learned that people of African descent in Argentina often faced inequalities and multiple forms of discrimination on the grounds of their race, colour, gender, sexual orientation and religious beliefs. Afro-Argentine women, women of African descent and African women lived in very poor conditions and felt excluded from society. The Working Group was also informed of the high number of adolescent mothers who are forced to leave school in order to look after their children. Women of African descent experience additional human rights concerns that relate to their job opportunities and the risk of being harassed and a victim of violence. Domestic workers, who are predominantly women, are invisible and subjected to long hours of work with no safeguards against abuse.

47. In that context, the Working Group acknowledges the adoption of Law No. 26.485 of 2009 on violence against women and Law No. 4.355 instituting the Day of the Afro Woman on 25 July in Buenos Aires. The Working Group also noted the “Spotlight initiative” of the United Nations in Argentina, which contributes to efforts to reduce violence against women and girls, and the work of the National Institute against Discrimination, Xenophobia and Racism, in conjunction with other agencies, to address the multiple forms of discrimination faced by women of African descent.

48. At the same time, the national law against discrimination is antiquated and needs to be reformed. The Working Group recommends that it include the criminalization of discriminatory acts based on sexual orientation and gender identity and reverse the burden of proof in support of the victims. The definition of racial discrimination should conform to international standards. It is recommended that special attention be paid to the needs and interests of groups that suffer multiple forms of discrimination and specific policies implemented, including production and dissemination of data and statistics on the situation of those groups, promotion of their participation in decision-making spaces and full access to their rights.

## V. Conclusions and recommendations

### A. Conclusions

49. **The Working Group recognizes the various concrete steps that have been taken by the authorities in recent years to recognize, as a matter of policy, the historical and contemporary human rights situation of Afro-Argentines. Several initiatives aimed at enhancing recognition, justice and development have been envisaged under the new action plan based on the International Decade for People of African Descent. The Working Group notes that the Secretariat of Human Rights and Cultural Pluralism**

implements the strategic lines of affirmative action for Afro-Argentines, people of African descent and Africans in matters of the right to development, access to justice and recognition. The Working Group concluded that public policies aimed at ensuring non-discrimination and protection of the human rights of the population of Afro-Argentines lacked effective enforcement. At the same time, the recognition of people of African descent in the 2010 census should be seen as the first step towards full institutional recognition of people of African descent as a distinct group. That would enable additional disaggregated data to be collected and analysis undertaken on the situation of their civil, political, economic, social, and cultural rights, as well as the discrimination faced in the realization of those rights. The 2010 census was a sample collection of data and not integrated nationwide and as such underrepresented the real population of Afro-Argentines in the country.

50. The Working Group remains concerned about the human rights situation of people of African descent in Argentina who experience racism and racial discrimination. The prevailing narrative obscures the reality that the Afro-Argentine population has existed for many years, continues to struggle to be recognized in Argentine society, and that they continue to be perceived as foreigners in their own nation. The Working Group was informed that in Argentina there was a general idea that Afro-Argentines were only those with obvious African features. That idea does not take account of the Afro-Argentines who are now of mixed race to the extent that some do not have obvious African features, yet they self-identify as people of African descent, owing to their African ancestry, and must be recognized as such. People of African descent in Argentina have been historically invisible and Afro-Argentine communities are today seeking recognition of their presence and contribution to history and the national culture, and seeking to banish the myth that in Argentina there are no black people.

51. The Working Group observed that Afro-Argentines were among the poorest of the poor. It noted with concern that people of African descent in Argentina were not able to fully enjoy their economic, social and cultural rights. Structural racial discrimination prevents them from enjoying the minimum international standards for development, including those set out in the Sustainable Development Goals.

52. The Working Group learned of a draft law for the creation of a national institute of Afro-Argentine, Afrodescendent and African affairs. The draft law was submitted by Afro-Argentine organizations, persons of African descent and Africans who are part of the network “Commission November 8th”. The objective of the draft law is to create a State agency at the national level for the creation and implementation of public policies and affirmative actions aimed at the Afro-Argentine, Afrodescendent and African populations. At the same time, it seeks to recognize the contribution of persons of African descent to the national identity and promote their human rights. The creation of the institute is intended to contribute to the process of visibility and to reverse and repair the historical denial of the Afro-Argentine community, combat racism and racial discrimination and contribute to the generation of public policies for the inclusion of the community of African descent within the framework of the International Decade for People of African Descent (2015–2024).

53. The following recommendations are intended to assist Argentina in its efforts to combat all forms of racism, racial discrimination, Afrophobia, xenophobia and related intolerance.

## **B. Recommendations**

54. The Working Group recommends that the Government give effect to its national Afrodescendent programme and action plan to implement the International Decade for People of African Descent.

55. The Government of Argentina should consider the ratification of the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance.

56. Legislative reforms affecting people of African descent should be undertaken in consultation with and with the involvement of their civil society representatives. In that connection, the Working Group recommends that the Human Rights Observatory of the Senate play an active role in promoting legislative measures aimed at enhancing the visibility and protecting the rights of Afro-Argentines and people of African descent. The National Institute against Discrimination, Xenophobia and Racism should be strengthened, especially its presence in the provinces.
57. The Working Group recommends that the national congress of Afrodescendants envisaged by the Government involve people of African descent at all stages from planning to implementation and include all organizations representing Afro-Argentines and Africans living in Argentina.
58. The Working Group welcomes the efforts of the Government to establish a mechanism to implement the recommendations of the United Nations and other bodies. The Working Group recommends that the mechanism bind not just the federal Government but also the provincial governments.
59. The Working Group recommends that the historical contribution of people of African descent to Argentine independence, culture, society and the economy be fully recognized at all levels of government and in society as a whole. A culture of inclusion should be fostered and supported.
60. The Government should as a matter of priority focus on addressing the invisibility of Afro-Argentines by promoting their culture, customs, traditions and history, as well as their contribution to the Argentine nation.
61. The Government should establish positive measures to ensure the effective representation of Afro-Argentines and people of African descent in the public sector, including in the highest decision-making positions.
62. The Working Group urges the Government to carry out awareness-raising programmes to prevent the use of words and expressions that are demeaning to people of African descent, using the communication manual developed by the National Institute against Discrimination, Xenophobia and Racism. The Government must further discourage the stigmatization of blackness in Argentina.
63. The Working Group urges the Government to provide support to civil society organizations in carrying out activities on 8 November to celebrate the National Day of Afro-Argentine Peoples and Afro Culture. The Government must promote a nationwide public dialogue on the significance of the history of Afro-Argentines, including their current human rights situation.
64. The Government should establish an institute for Afro-Argentine, Afrodescendent and African affairs, which should be staffed by Afro-Argentines and adequately funded. The Working Group recommends that the institute be supported by an interministerial task force.
65. The Working Group strongly recommends that the upcoming national census in 2020 include questions relating to Afro-Argentines and should be prepared in consultation with Afro-Argentines and people of African descent nationwide, allowing for voluntary self-identification. They should also be involved in deciding on the process by which the census will be administered. Such data should then be utilized to inform public policies to address structural discrimination faced by Afro-Argentines. The Working Group further urges the Government to conduct awareness-raising campaigns on the questionnaire, in order to collect data that would be reflective of the reality of people of African descent in the country. The questionnaire must be given to the entire population of Argentina in order to collect data on people of African descent. In that connection, the Working Group offers its own data mapping questionnaire, sent to Argentina in December 2018, for possible guidance on the shaping of the 2020 census.
66. In order to ensure that the 2030 Agenda for Sustainable Development truly leaves no one behind and racial discrimination is addressed, Afro-Argentines and

other people of African descent must be identified and specific programmes developed to protect their human rights. In the context of the fortieth anniversary of the Buenos Aires Plan of Action for Promoting and Implementing Technical Cooperation among Developing Countries, celebrated from 20 to 22 March 2019 in Buenos Aires, the Working Group encourages all countries and relevant stakeholders to strengthen their efforts to implement the 2030 Agenda in all South-South and triangular cooperation policies and activities by specifically promoting the human rights of people of African descent.

67. The Working Group encourages the United Nations system and development partners to study the situation of Afro-Argentines and other people of African descent in the country within their area of competence and develop specific programmes to assist them.

68. The country's past has a bearing on contemporary law enforcement, therefore significant changes in the training of law enforcement agents are required, as well as cultural awareness training to adapt to a culturally and racially diverse society.

69. The Working Group urges the Government to study and address institutional and structural racism and racial violence against Afro-Argentines and people of African descent in partnership with concerned communities. In the case of José Delfin Acosta Martínez, the Working Group recommends that steps be taken to immediately grant full reparations to his family.

70. Excessive policing of street vendors of African descent must come to an end. The absence of a sufficient legal basis makes the warrantless arrests unlawful in the first instance. The brutality attending the arrests further violates the human rights of the street vendors. Argentine law enforcement officials must exercise restraint, minimize damage and injury, and heed the other principles of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The irregular immigration status of some of the vendors ought to be corrected by official action. The amnesty granted in 2013 to undocumented migrants was a good practice and should be repeated. Migrants should be able to access Spanish language lessons. Other pathways to citizenship for migrants must be created. Livelihood and other support measures for migrants, residents and new citizens should be provided.

71. The Working Group recommends an in-depth independent investigation into police action targeting street vendors in the city of Buenos Aires to monitor and identify perpetrators of racial discrimination, violence and the theft of goods, develop remedies and combat impunity.

72. In gathering disaggregated data on the numbers of people of African descent in detention, the Working Group recommends the inclusion of a question as to when they arrived in detention facilities or prisons and whether they self-identify as a person of African descent.

73. The Working Group recommends measures to increase representation of people of African descent at all levels in the public administration, the judiciary, the prosecution services and law enforcement, as well as other sectors, including education and the media, among others.

74. The Working Group recommends that the inequalities and invisibility of Afro-Argentines are addressed from the perspective of reparatory justice, based on the recognition of people of African descent, as stipulated by the Durban Declaration and Programme of Action. Efforts to increase visibility should ensure that Afro-Argentines benefit from development programmes aimed at improving their life quality and the enjoyment of human rights. The Caribbean Community Ten Point Plan for Reparatory Justice can serve as a useful reference in that regard.

75. The Working Group recommends the establishment of a museum of Afro-Argentine culture, supported by the State in partnership with the Afro-Argentine community. The museum must be a centre of historical remembrance, adequately referring to the presence and sacrifice of Afro-Argentines before and after 1816.



76. The Working Group recommends that the presence and legacy of Afro-Argentines and people of African descent is reflected in the form of monuments and cultural sites, such as La Capilla de Los Negros in Chascomus.
77. The Working Group recommends that school curricula, at both the elementary and secondary levels, include the history and contributions of Afro-Argentines to nation-building. The Working Group recommends that the educational authorities at the national and provincial levels develop the curricula together with Afro-Argentines.
78. The Working Group urges the Government to guarantee access to inclusive and equitable education for Afro-Argentines. Children of African descent from rural communities must have every opportunity to attend and excel at school and university. Quotas must be established for Afro-Argentines and people of African descent, with adequate support for their education. Adult education should also be provided.
79. The Working Group urges the Government to introduce quotas in order to ensure that Afro-Argentines and people of African descent are employed in the public and private sectors at all levels. They must be provided with training and opportunities to access the formal employment sector.
80. There must also be quotas for Afro-Argentines by way of land and land tenure rights for them. From a reparatory approach, land rights must be guaranteed for Afro-Argentines. Government lands may be dealt with more easily than privately owned land in this regard. For private land, agrarian or land reform must be implemented with people of African descent as the beneficiaries. Afro-Argentines should come into ownership of land, a vital resource to which their lives are intimately bound. Support services must accompany the land transfer to enable Afro-Argentines to maximize their productive use of the land.
81. The Working Group urges the Government to ensure that access to primary health care is extended to Afro-Argentine communities and that medical practitioners, including specialist doctors, are available in those communities. Conditions must be created for the establishment of affordable health-care facilities, goods and services that are available in sufficient quantity, accessible, non-discriminatory, culturally appropriate and of good quality.
82. The Working Group urges Argentina to take all necessary measures to ensure full implementation of the right to an adequate standard of living, including the right to adequate housing for people of African descent. This must be coupled with the development of adequate infrastructure in rural areas where people of African descent live.
83. The Government should ensure that women of African descent are adequately protected from all forms of discrimination and violence and can enjoy equal opportunities in access to employment, health and justice. The authorities should also ensure that the implementation of Law No. 26.485 of 2009 on violence against women adequately addresses the additional risks of being subjected to violence and harassment faced by women of African descent.
84. The Working Group reminds the media of their important role as a public watchdog with special responsibility for ensuring that factual and reliable information about people of African descent is reported. It also urges the media to play its role in increasing the visibility of Afro-Argentines and people of African descent and their culture. The authorities should support initiatives aimed at recognizing the presence and historic legacy of Afro-Argentines in the theatre, music, television and film.
85. The Working Group would like to reiterate its satisfaction at the Government's willingness to engage in dialogue, cooperation and action to combat racial discrimination. It hopes that the present report will support the Government in this process and expresses its willingness to assist in this important endeavour.