

ARTICLE

## Afro-Uruguayans

### *Implementation of Law No. 19122 in the Workplace*

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#### Abstract

For the past several years, affirmative action policies and their implementation have constituted a field of debate and academic research, in dialog with social movements and public policies carried out by various Latin American and Caribbean states, to mitigate persistent historical inequalities related to discrimination and racism. This article presents the results of the implementation of affirmative action policies for Afro-descendants in Uruguay in the workplace between 2014 and 2019, the first five years of implementation of Law No.19122 (which establishes a period of fifteen years in total for its validity). These results were obtained through interviews with key informants and through documentary analysis of the annual reports of the National Civil Service Office for the period under consideration.

**Keywords:** Racism; Affirmative Action; Afro-descendants; Public Policies; Inequality; Equality

#### Introduction: Affirmative Action in the Uruguayan Context

This article presents the results of the implementation of affirmative action policies in the workplace for Afro-descendants in Uruguay, during the period 2014–2019. Also within the scope of this work is the monitoring of the implementation of Law No. 19122 in a project that included the area of education.

Through documentary analysis and interviews, it was possible to determine that even when steps forward have been identified, significant obstacles for the implementation of Law No. 19122 still remain. One example would be prevailing institutional racism, which is strongly embedded to different degrees in the cultural inertia of those who form part of the institutions. Racism and its consequences are not within the issues the government has on its agenda, to be addressed systematically by its bodies in the planning, and by those legally linked to the government. Proof of this is the lack of training offered on hiring people of African descent, the lack of planning and requests of advice to carry out public competitions that would include hiring persons of African descent, the lack of a survey—and of plans to carry one out—of ethnic-racial self-definition, and the lack of consequences for not taking any of these steps.

The Uruguayan State has been long known for passing laws to ensure civil equality among its citizens, and even among the inhabitants who are not citizens. However, legal guarantees have actually become an obstacle to perceiving discrimination and racism as problems historically present (Andrews 2010). In his research on the region, historian

George Reid Andrews emphasizes that, as in Brazil and Cuba, the Uruguayan State must combat the racist culture that is deeply embedded in its social fabric. Some examples of structural and institutional racism in the government can be traced back to the demands of the Partido Autóctono Negro (PAN) (Native Black Party), in the mid-nineteenth century. This party strongly denounced the discrimination suffered by public servants of African descent, who were not considered for promotions because of the color of their skin. However, those same workers were trapped within the mechanisms of loyalty to the political parties and their leaders (Blanco and Colorado parties), since they had obtained their positions as public servants in exchange for their vote (Andrews 2010). Obtaining a position as civil servant has meant—and to a certain extent still means—higher work stability, as the risk of losing a job as a civil servant is very low.

Since the restoration of democracy in 1985, Uruguayan public policy began to address some of these ethnic-racial issues. The transformation involved the exercise of old rights and the inclusion of new ones: economic, social, cultural, and environmental rights (DESC +A). At the beginning of the 1990s, indigenous and Afro-peoples movements emerged in Latin America and the Caribbean. At the same time, organized Afro-Uruguayans started making demands. The holding of international conferences and meetings that led to new legislation focused on rights, and Uruguay's compliance with the commitments made in those spaces, were also fundamental (Olaza 2021).

During the period of transition to the restoration of democracy, it is key to highlight the strength and relevance of the creation of racial awareness. This constitutes a decisive period in the reorganization and debate of Afro-Uruguayan activists for the creation of a space in which to publicly articulate an ethnic identity. Also, this was a space from which to place demands on the government against their constant invisibilization and discrimination (Olaza 2008, 2021; Sharnak 2022). During this period, Afro-Uruguayan activism was centered on the experience of invisibilization and the violence suffered during the dictatorship. The political climate during the transition period and the influences from abroad were favorable (Sharnak 2022). The characteristics of this new historical moment invigorated the demands of activists and strengthened their permanence as a collective actor who was becoming more and more visible.

The year 2005 saw the beginning of the creation of policies to mitigate the consequences of implicit and manifest racial discrimination in Uruguayan society. In some ministries, secretariats dealing with matters relating to the Afro-descendant population were created—called mechanisms of racial equity<sup>1</sup> (MER in Spanish)—with the task of strengthening access to social services and programs for the Afro-descendant population. However, at the same time, there was a gradual inclusion of the ethnic-racial approach, specifically an approach that would consider people of African descent, in public policy decisions and, therefore, a consideration of the racial aspect and its connection with inequalities. In this sense, the assumption of responsibility on the part of the State concerning inequalities generated by racism was of special importance in 2013, with the adoption and regulation of Law No. 19122, which establishes affirmative action for Afro-descendants in education and the workplace. This was fundamental to evidence the presence and operation of race in the daily actions (Quijano 2009) of Uruguayan society, as well as to initiate a process of Afro-descendant recognition, redistribution, and, in part, representation (Fraser 2001). “In part” because this aspect is barely contemplated by this Law. The representation aspect is only deduced by the creation of the Advisory Council, created to provide guidance to the Implementing Commission (Olaza 2015). The Advisory Council is required to have among its members organizations of the Afro-Uruguayan movement.

Law No. 19122 consists of twelve sections. As expressed in Section 1, the spirit of the legislator is to encourage reparation for the historical damage that racism has caused and causes in the Afro-descendant population living in the national territory, and to recognize

the historical suffering experienced by the population of this territory as a result of racism, discrimination, and stigmatization, currently condemned by international law as crimes against humanity. Furthermore, to promote the eradication of racism and its negative consequences for this population, this Law provides for the creation and implementation of affirmative action in the public and private spheres, to guarantee the fulfilment of the enjoyment of the human rights established in the Constitution of the Republic.

For the fulfilment of these aspirations, Section 4 establishes a period of fifteen years in which “8% of the positions to be filled each year must be allocated to Afro-descendants, through public competitions.” This obligation applies to “the Powers of the State, the Court of Auditors, the Electoral Commission, the Administrative Court, departmental governments, autonomous entities, decentralized services, and persons under non-State public law.” The same quota must be taken into account by the National Institute of Employment and Vocational Training (INEFOP) and for scholarships and student funds at the national and departmental levels (Sections 5 and 6) (Olaza 2015). The National Civil Service Office (ONSC) must report annually, in compliance with Section 4.

Also, from the fifth year of application of the Law, a commission responsible for monitoring and evaluating the provisions of this Law should begin to function. The Law states that “this Commission will be advised by an Advisory Council composed of three representatives of civil society organizations, with proven competence in the Afro-descendant issue” (Section 9). With regard to the time established by this Law for the formation of a monitoring and evaluating commission, some questions arise: How was it implemented within the government? How did the information reach the public servants in each institution? Does each unit have information on how many Afro-descendant public servants work there? It is also necessary to look at how the public competitions, as well as the dispositions of the Law, were communicated among the people of the Afro collective for them to effectively exercise their rights (Olaza 2017b).

### **Methodology, Scope, and Limits of the Study**

In light of the foregoing, it was considered of special interest to study the progress and difficulties of the implementation process of Law No. 19122 during its first five years of validity. This period corresponds to the years in which the project to monitor this Law was conducted. Also, as mentioned above, the commission for the monitoring and evaluation of the Law, and the Advisory Council, to provide guidance to the Commission, were set to start functioning after the fifth year of application of the Law.

This research was conducted from a qualitative methodological perspective, based on eight interviews with key and qualified informants. These interview subjects were representatives of mechanisms of ethnic-racial equity, members of the Afro-organized movement appointed to act in the Advisory Council (established under Section 9 of the above-mentioned Law, to advise the Commission), the presiding member of the Honorary Commission against Racism, Xenophobia, and all other Forms of Discrimination (that must be informed annually on compliance with this Law by public bodies (Section 10)), and key informants from public bodies. Taking into account the saturation of the information provided, the number of interviews was considered enough to obtain relevant information that could be compared with the evidence obtained from documentary analysis performed. Six of the interviewees were of African descent—three women and three men—and the other two were non-Afro women. Some interviews were conducted face-to-face and some were virtual, without this having affected the results, duration, or the disposition of the interviewees.

The information from the interviews was triangulated with the analysis of documents produced during the period. On this aspect, priority was given to the annual reports of the

ONSC, since this Law made them mandatory on an annual basis. In addition, other documents from the period, prepared to guide or evaluate the implementation of this Act, were selected.

Regarding limits and scope, it must be noted that the intention of the documentary analysis of the reports was to systematize and consider their general structure, their main conclusions, and their evolutionary analysis for the period studied. It is acknowledged that other readings of the vast information that the documents exhibit are possible, which is addressed at various points in this text, where it is mentioned that there are some aspects that this work leaves undiscussed.

### **Institutionalism and the Implementation Process of the Act**

During the implementation process of this Law (2014–2019), institutional and legislative changes were generated, and inter-institutional linkages were created within the state and with the organizations of the Afro-Uruguayan movement. The Implementing Commission was created between 2015 and 2016. This commission is mandated by the Law and is formed by the Ministry of Labor and Social Security (MTSS), the Ministry of Education and Culture (MEC), and is chaired by the Ministry of Social Development (MIDES). The ONSC was subsequently incorporated. This was not provided for by this Law or its regulations, but MIDES rightly understood that, given ONSC being required to produce an annual implementation report, its presence in that commission was important. In turn, the Advisory Council was formed, with three members of recognized organizations, as provided for by the Law.

In 2017, the National Plan for Racial Equity and Afro-descendants and the Working Group on Racial Equity Policies were established by presidential resolution DS/181. Their object is to promote measures to enforce the actions established in the resolution of the General Assembly of the United Nations and to work on the creation and implementation of the National Council for Ethnic-Racial Equity and Afro-descendants (*Consejo Nacional de Equidad Racial y Afrodescendencia 2019*). Some of its objectives are: to advise the Executive in matters of its competence; to promote the mainstreaming of the ethnic-racial and Afro-descendant perspective in public policies; to provide the specialized technical advice required by those responsible for implementing regulations, programs, and public policies; to promote the incorporation of the ethnic-racial variable in all State records, especially in personal data information, as well as in systems related to human resources recruitment and selection, training, and assignment of scholarships and student supports; to develop and disseminate protocols and other information that it would deem relevant for the most effective enforcement of existing rules relevant to the subject; to approve its own action plan, which will be presented by the National Directorate for Sociocultural Promotion of MIDES; to approve its annual report on management and operation; and to work on the design and implementation of a National System of Racial Equity and Afro-descendants.

The council is composed of the Ethnic-Racial Unit of the Ministry of Internal Affairs; the Afro Adviser of INEFOP; the Afro focal point of the Social Security Authority (BPS); the Secretariat of Ethnic-Racial Equity and Migrant Populations of Montevideo Government; the Ethnic-Racial Unit of the Ministry of Foreign Affairs; the Afro advisory division of the Office of Planning and Budget (OPP); the Afro Working Group at the National Office of Human Rights and Ombudsman (INDDHH); the National Congress of Mayors, representing Rivera, Florida, and Montevideo departments; the Department of Afro-descendant Women of Inmujeres-MIDES; and the Human Rights sections of the Uruguayan Post Office and the Uruguayan Agency for International Cooperation (AUCI)

(MIDES 2019a). Some of these mechanisms of racial equity may have been modified, removed, or replaced.

In 2018, the Accountability and Balance of Budget Execution Act, Law No. 19670, created the National Council on Racial Equity and Afro-descendants in the orbit of MIDES and established the leadership of that ministry on issues of racial equity and Afro-descendants. This council is in charge of drawing up plans for the promotion of equality and non-discrimination among persons of African descent and providing substantive guarantees for the exercise of human rights. That same year, the Department of Afro-descendants was established in the Human Rights Division of the National Directorate for Socio-Cultural Promotion (MIDES), and in 2019 MIDES presented the National Plan for Racial Equity and Afro-descendants (2019–2022).

### General Structure of the ONSC Annual Reports

This section outlines the structure of the ONSC annual reports for the period covered by this research (2014–2019), a summary of each one, and an evolutionary review taken from the report produced in the last year considered (2019) (see [Appendix](#)). They are then compared with other documents produced during the period, and with the results of interviews.

ONSC reports include compliance with this Law in the workplace in the public sector. These reports were prepared annually by the Observatory of Human Resources Management in the Government (part of ONSC) within the Presidency of the Republic.

Regarding the private sector, this Law does not mandate monitoring of compliance, it only requires that private employers take its contents into account. Recent research indicates that the private sector is not implementing this Law at all (Olaza et al., 2023).

With small variations, the structure of the reports remains the same, although in some cases the order of the chapters, as presented in the table of contents, varies. Each report is headed by a fact sheet which presents the objective of the document, the normative framework, the survey method, the universe, the source, the frequency of completion, the period surveyed, who carried out the survey and the drafting, the survey date, and the criteria for processing the forms. This sheet is followed by the chapters: Norms concerning affirmative action to favor the Afro-descendant population in the workplace; Organic grouping of State bodies and legal persons under non-State public law; Summary; Report on the hiring of Afro-descendant persons in the State for the period; Introduction; Conceptual framework; Information analysis; Evolutionary analysis; Synthesis; Bibliography; and Annex. In 2016, an evolutionary analysis was added to the structure of the report.

### Annual Synthesis of Reports

The first report was produced in 2014, which showed an important degree of compliance in the presentation of information by those public bodies and legal persons under public non-State law required to do so (ONSC 2014). Ninety-two percent sent complete information, 1% incomplete, and 7% did not send information. However, compliance with a minimum quota of 8% was not so successful. In this sense, four public bodies complied with this minimum (Cerro Largo and Rivera governments, INEFOP, and the Honorary Commission for the Eradication of Unhealthy Rural Housing [MEVIR]), while others did not comply with the quota or did not apply it (see [Table 1](#)).

In 2015, the Ministry of Defense and the National Administration of Water Works (OSE) complied with the stipulated quota, with the admission of 269 (8%) and twenty-five (9%) persons respectively (ONSC 2015). One person of African descent was hired by

**Table 1.** Compliance with the 8% quota, as percentage of public bodies (2015–2019)\*

	Total of public bodies					Bodies that should have hired Afro-descendants, in view of the number of hirings				
	2015	2016	2017	2018	2019	2015	2016	2017	2018	2019
Public bodies that complied with the quota.	3%	1%	1%	11%	6%	5.8%	1.5%	1.5%	18.2%	8.5%
Public bodies that hired Afro-descendants but failed to meet the quota.	9%	15%	16%	19%	20%	19.2%	26.5%	29.3%	29.9%	30.5%
Public bodies in which the 8% of the number of hirings does not represent one position.	9%	24%	17%	20%	16%					
Public bodies that hired enough staff (7+) but did not comply with the quota (no hirings of Afro-descendants).	34%	40%	37%	33%	41%	75%	72.1%	69.2%	51.9%	61%
Public bodies that did not hire any new staff.	46%	20%	30%	16%	17%					
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>52</b>	<b>68</b>	<b>65</b>	<b>77</b>	<b>82</b>

\* Information available only for this period.  
Source: Based on data from ONSC (2019).



MEVIR. In eight national government bodies and in one parastatal body, the 8% quota was not met.

The 2016 report shows that MEC complied with the stipulated quota, with the employment of two persons of African descent (ONSC 2016). There were hirings in the Legislative Branch, in five bodies of the Executive Branch, in two subparagraphs corresponding to article 220 of the Constitution of the Republic, in four subparagraphs of article 221 of the Constitution of the Republic, in four departmental governments, and in two parastatal bodies. The 8% quota was not met. This report introduces a form with questions to find out if training activities were carried out, if they are planned for the following year, if there are plans for a public competition in the following year, if advice is needed for that, whether the ethnic-racial variable was registered, and whether there are plans to have it registered in the following year. The responses indicate that the majority did not undertake training activities and did not have plans to open competitions in 2017, and one third expressed the need for advice on their implementation. Most public bodies had not registered the ethnic-racial variable and were not planning to do so. Another innovation in this report is the inclusion of an evolutionary analysis.

According to the 2017 report, the Cerro Largo Departmental Board was the only public body that complied with the stipulated quota, having hired three people of African descent (ONSC 2017). There were hirings in another seven public bodies of the Executive Branch, in five subparagraphs corresponding to section 220 of the Constitution of the Republic, in five subparagraphs of section 221 of the Constitution of the Republic, in two departmental governments, and in one departmental board. In general terms, the 8% quota established by this Law was not met. One and a half percent of the public bodies met the quota, 29.3% made Afro-descendant hirings but did not meet the quota, and 69.2% of the public bodies hired new staff but none were Afro-descendants.

In 2018, fourteen public bodies met the 8% quota, and twenty-four hired people of African descent but did not meet the quota (ONSC 2018). Considering the public bodies that should have hired persons of African descent, 18% of the public bodies met the quota, 30% hired people of African descent but did not meet the quota, and 52% of the public bodies hired new staff but none were Afro-descendants.

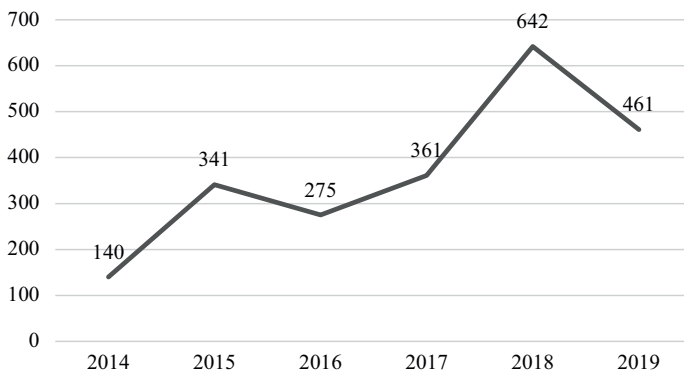
In 2019, there were seven public bodies (six State bodies and one non-State public legal entity) that did not meet the 8% quota of jobs to be filled with people of African descent: National Administration of Railways (AFE), National Administration of Telecommunications (ANTEL), OSE, National Post Office Administration, Durazno government, Rivera government, and National Corporation for Development (CND) (ONSC 2019). In turn, another twenty-five public bodies made new hirings but did not meet the 8% established by the quota. Considering the public bodies where the hiring of persons of African descent should have occurred, 8.5% of the public bodies met the quota, 30.5% made hirings of people of African descent but did not meet the quota, and 61% of the public bodies made hirings but none were people of African descent.

The 2019 report indicates that from 2014, when Law No. 19122 began to be implemented, until December 31, 2019, 2220 persons of African descent were hired (see Table 2). Of those, forty-five were hired by State bodies and nine by legal persons under non-State public law (ONSC 2019). As shown in Figure 1, between the first year of implementation (2014) and the second year (2015), approximately two and a half times more people of African descent were hired. In 2016, the curve drops to rise again in 2017, a tendency that continues, with a further increase in the number of Afro-people who were hired in 2018, and a decrease again in 2019. These oscillations may be related to pre-election years, when the budget is voted the year before, and no public servants are expected to be hired during that period.

**Table 2.** Afro-descendants hired per year and percentage of all hirings

Year	Total Afro-descendants hired	Total hirings	Percentage of all hirings
2014	140	13,186	1.10%
2015	341	12,571	2.71%
2016	275	15,459	1.58%
2017	361	17,515	2.06%
2018	642	19,544	3.29%
2019	461	20,622	2.24%
<b>Total</b>	<b>2220</b>	<b>98,897</b>	<b>2.25%</b>

Source: Based on data from ONSC (2014–2019).

**Fig. 1.** Evolution of Afro-descendant people hired per year (2014–2019)

In relation to the number of hirings of Afro-descendants by gender, [Table 3](#) shows that, for the period studied (2014–2019) 60% were men, and 40% women. Except for 2018, every other year shows a prevalence of male hirings. According to the reports consulted, only three transgender people were hired.

In terms of age, during the period, the highest number of hirings were from people between the ages of eighteen to twenty-nine, followed by less than half of hirings of people between thirty and forty-five years of age and a small number of hirings of people above forty-six years old (see [Table 4](#)). This tendency does not vary significantly year to year.

**Table 3.** Afro-descendant hirings per year and per gender

Year	Total Afro-descendant hirings	Gender					
		Male		Female		Trans	
2014	140	93	65%	46	31%	1	1%
2015	341	270	79%	71	21%	0	0%
2016	275	187	68%	88	32%	0	0%
2017	361	248	69%	113	31%	0	0%
2018	642	295	46%	345	54%	2	0%
2019	461	234	51%	227	49%	0	0%
<b>Total</b>	<b>2220</b>	<b>1327</b>	<b>60%</b>	<b>890</b>	<b>40%</b>	<b>3</b>	<b>0%</b>

Source: Based on data from ONSC (2014–2019).



**Table 4.** Afro-descendant hirings per year and per age

Year	Total Afro-descendant hirings	Age					
		18 - 29		30 - 45		46+	
2014	140	102	76%	33	22%	5	2%
2015	341	280	82%	53	16%	8	2%
2016	275	206	75%	59	21%	10	4%
2017	361	258	71%	82	23%	21	6%
2018	642	316	49%	283	44%	43	7%
2019	461	277	60%	160	35%	24	5%
<b>Total</b>	<b>2220</b>	<b>1439</b>	<b>65%</b>	<b>670</b>	<b>30%</b>	<b>111</b>	<b>5%</b>

Source: Based on data from ONSC (2014–2019).

**Table 5.** Afro-descendant hirings per position and per gender (2014–2019)

Position	Total		Gender					
			Male		Female		Trans	
Assistant/ Services/ Maintenance	297	13%	132	44%	165	56%	0	0%
Administrative/ Sales	325	15%	95	29%	228	70%	2	1%
Trade	241	11%	155	64%	86	36%	0	0%
Technical-professional	176	8%	53	30%	123	70%	0	0%
Teaching	116	5%	47	41%	69	59%	0	0%
Entry-level position in the Ministry of Defense/ Ministry of Internal Affairs	826	37%	701	85%	125	15%	0	0%
Other positions	117	5%	47	40%	69	59%	1	1%
No data available	122	6%	97	80%	25	20%	0	0%
<b>Total</b>	<b>2220</b>	<b>100%</b>	<b>1327</b>	<b>60%</b>	<b>890</b>	<b>40%</b>	<b>3</b>	<b>0%</b>

Source: Based on data from ONSC (2014–2019).

Table 5 presents the hirings per position for the period. Most hirings were for entry-level positions in the Ministry of Defense and the Ministry of Internal Affairs. Also, most hirings were of men. Positions available for women were mostly administrative and technical-professional.

### Other Selected Documents and Triangulation of Documents and Interviews

To promote greater compliance with affirmative action, MIDES developed a series of informational materials. It also generated activities in the Month of Afro-descendants, in combination with other public-bodies who are members of the Implementing Commission, and the University of the Republic, among others. The aim was to amplify the rights-based approach within secondary education, through a project coordinated with the Board of Directors of the National Administration of Public Education. Also, a book was published for the teaching of Afro-descendant history in Uruguay, and another project focuses on the analysis of affirmative action for Afro-descendants in the area of education.

The documentary material created to assist in the implementation of this Law will be analyzed below. As mentioned above, MIDES prepared a *Guide for the Implementation of Affirmative Action for the Afro-descendant Population* (Guía de implementación de acciones

afirmativas para la población afrodescendiente), according to the guidelines of Law No. 19122 and Decree 144/014 (Uruguay, Poder Ejecutivo 2014) that regulates it. This guide provides a legal and conceptual framework for the Affirmative Action Act and its application; it illustrates how to design the registration of ethnic-racial ancestry; its implementation; its monitoring; and its evaluation. It is a brief document, with wording that seeks to be understandable, without overlooking the rigor of the information offered. Within this publication, it is worth noting the communication about the need to register the ethnic-racial composition of each public body, how to carry out the registration through the census question, and planning the application of the percentage one year in advance. The former allows us to know whether there are Afro-descendant public servants and, if any, how many. The latter facilitates the implementation of this Law by allocating the necessary resources to reach at least the 8% required by the Law, as a minimum basis. Another important point to highlight is the leaning toward offering a variety of positions, transcending the constantly reinforced stereotype of employment in the areas of services and maintenance. Also, there is the provision of a draw (if any, before the test) for Afro-descendants only, separate from the general draw, to better guarantee the 8% desired. The importance of offering awareness training and training in ethnicity-race is made explicit, to bring forward the urgency of applying affirmative action (MIDES 2015). This guide was published in paper format and on the ministry's website. The same ministry prepared some material on the International Decade of People of African Descent, in a format similar to that used for the implementation guide, reinforcing the objectives of the ministry as governing body of the social policies and affirmative action measures discussed here.

Another document relevant to this work is the *Guide for the Mainstreaming of Afro-descendant Issues and the Implementation of a Quota in the Workplace in the State. Law No. 19122 Section 4* (Guía para la transversalización de la temática afrodescendiente y la implementación de la cuota laboral en el Estado. Ley n.º 19.122 Artículo 4.º), drawn up by MIDES in 2019 (MIDES 2019b). Among the recommendations included, some are related to departmental governments, which generally do not apply this Law, except for Montevideo, Rivera and, to a lesser extent, Cerro Largo.

In general, local governments did not apply it throughout the quinquennium. One of the recommendations proposed that OPP, through the funds for the development of the Interior, incorporate some clauses related to the Afro-descendant issue and specifically, to Law No. 19122, to generate restrictions to access the Fund for the Development of the Interior by awarding points to those who apply this Law and scoring negatively those who do not apply it (Interview 7, qualified informant, MER representative).

The interviewee reports that this idea did not succeed. In addition, it is noted that for problems that were identified as relating to self-perception, in agreement with the Implementing Commission, it was recommended to combine it with heteroidentification.

The guide sets out a very important issue that generated much doubt, given that this Law does not make it explicit, which is how to apply this Law effectively. The implementation by Uruguay Concurso was taken as an example. It addresses several phases: how to reserve positions; identification of the competitions; publication; application period; random ordering; stages; procedure; priority lists; final official report, and assignment of positions (ONSC 2019).

In 2019, INDHH also produced a report on the application of Law No. 19122. This document is relevant given the institution's mission concerning the observance of human rights. Chapter 5 of said report presents conclusions and recommendations for the implementation of the abovementioned Law. In this regard, it is strongly suggested to analyze the creation of incentives for effective implementation and to determine measures for those who do not apply it; to include the ethnic-racial variable in the statistical registers of State public bodies and persons under public non-State law mandated by the Law; to

design ongoing training programs for public servants in charge of the execution of competitions, to comply with the provisions of this Law; to carry out permanent campaigns on public media to inform the whole population about the Law; to evaluate the compliance with this Law after ten years, to analyze if it is necessary to extend its period of validity (upon the verification of changes in the gap that separate the living conditions of the Afro-descendant population and the non-Afro population) (INDDHH 2019).

An important document for the implementation is the creation, by Presidential Resolution (DS/181) of 2017, of the National Plan for Racial Equity and Afro-descendants, and the Working Group on Racial Equity Policies, to establish measures for the effective implementation of the actions defined in the resolution of the General Assembly of the United Nations and to work on the creation and implementation of the National Council for Ethnic-Racial Equity and Afro-descendants. The National Plan for Racial Equity and Afro-descendants (2019–2022) is executed by the National Council for Racial Equity and Afro-descendants and is articulated with the National Strategy of Public Policies for Afro-Uruguayan and Afro-descendant Population (2018–2030) of the OPP (Consejo Nacional 2019).

The plan places Afro-descendant problems within the Latin American and Caribbean historical context, and it includes the institutional and normative advances for the achievement of racial equity in Uruguay today, the process of drawing up the plan through consultations by holding regional territorial assemblies, interviews and focus groups, the conceptual framework of the plan, and the strategies. The latter are ten, each detailing the strategic actions, expected results, indicators, source of verification, and responsible and collaborating institutions, inter-institutional work, and alliances. The plan includes issues not addressed by Law No. 19122, such as health, housing, gender, and territorial perspective. Strategy 6 aims at an equitable labor market and employment with an ethnic-racial perspective, through alliances with the Uruguayan business sector, to incorporate the ethnic-racial perspective into the private labor market, and greater training for Afro-people, for example, through INEFOP's offer of courses and its role in the assessment of training needs. This point of the plan is strongly interlinked with other strategies, such as those connected with the statistical invisibility of the Afro population, the fight against racism and the reduction of multi-dimensional poverty from an ethnic-racial, Afro-descendant, and territorial perspective (Consejo Nacional 2019).

In 2020, the Management and Evaluation Area (AGEV) of the OPP prepared an evaluation of the application of affirmative action for people of African descent under Law No. 19122. One of the objectives of the area is to “promote the analysis, evaluation and monitoring of public policies and the use of planning and budgeting tools for the continuous improvement of services, the optimization of spending, transparency, and accountability to the public” (AGEV 2019, p. 5). The report includes three chapters: a description of the intervention, the results of the evaluation, and main conclusions and recommendations. The first chapter presents the objectives; the potential, target, and beneficiary population; the resources allocated; the intervention strategy; and the main organizational aspects. The second chapter refers to design, implementation, and performance, and the third to conclusions and recommendations.

For the purposes of this work, the following recommendations were selected:

- In the face of non-compliance with the measures established by the Law, it is suggested to consider sanctions, to define mechanisms of implementation and the institutions responsible for their application
- to establish a system of incentives for compliance with the Law, in particular for section 4.3.2

- to consider the creation of the institutional structure that includes institutional redesign (for example, strengthening the role of chair of the Implementing Commission), complementing the role of the commission with that of the referents of racial equity units in the public bodies
- to refer the functions of Implementing Commission to the Secretariat of Human Rights of the Presidency of the Republic
- to expand the affirmative action in this Law by integrating other areas, such as housing and health
- to identify ethnic-racial referents in all public bodies that are valid interlocutors for the enforcement of the Law, and serve as liaison between each body and the commission
- to encourage each public body to formalize their referents in ethnic-racial equity, to set goals for the implementation according to their capacities and maturity, and that the commission supports this definition from a role of facilitator and active follow-up
- to improve the articulation between the institutions connected with the Law, civil society organizations, and public bodies involved in its implementation
- to strengthen the exercise of global planning and by type of product of the Law, associated with the 2015–2020 work plan, and engage in dialog with other plans and strategies that address the issue of ethnic-racial equity and the situation of the Afro-descendant population about the aforementioned planning of the actions stated in the Law
- to develop a single information system that feeds on data produced by each body and allows monitoring of the implementation of this Law with defined indicators, baselines, and targets
- to dedicate planning and budget for the actions in Law No. 19122, identifying the budget items and sources for the actions necessary for implementation
- to strengthen the information system of the Law, mainly to measure products and results
- to improve the budgetary conditions of the Law, to ensure a better execution of processes in its implementation.

As previously stated, it is possible to affirm that there is a high degree of compliance by the public bodies with the submission of information required by the Law, and by the ONSC with the preparation of reports, but the same is not true for the effective implementation of the 8% quota in the state public sphere. The hiring for non-manual tasks or positions other than as soldiers in the Army is too slow. This is despite what is established by Decree 144/014, which regulates Law No. 19122, with important provisions to encourage the participation of Afro-descendants in education and the workplace.

Among other things, the decree establishes self-perception as a criterion for defining the race or ethnic ancestry of persons, following INE criteria; it regulates the procedure of drawings and equitable distribution among the grades, establishes the obligation to include jobs to be filled by people of African descent in the annual planning of the national budget for paragraphs 2 to 15, on the need for human resources, including their description and the profiles required, information which is to be sent to the ONSC by December 31 of each year.

It is a step forward that, since the 2017 report, section 4 of Law No. 19438 (Uruguay, Poder Legislativo 2016) was added, which was not present in the previous reports. This section establishes that each time the public bodies covered by the first subparagraph of section 49 of Law No. 18651 (Uruguay, Poder Legislativo 2010), and section 4 of Law No. 19122, carry out a process of selecting staff to fill vacancies, they must expressly

indicate the profile(s) to be covered by the positions, the functions and the budgetary credits involved in the fulfilment of these provisions. It also provides that subparagraphs 2 to 15 of the national budget shall communicate to the ONSC and the CGN the data arising from the budget in force by December 31 of the previous immediate year, concerning all permanent positions and contracted functions of any rank and grade, that meet the requirements of the regulations mentioned in this section, the total amount of budgetary credit corresponding to permanent positions and contracted functions, and the vacant positions and contracted functions that will be affected to meet the statutory minimum percentages. Likewise, section 6 of Law No. 19149 (Uruguay, Poder Legislativo 2013), includes the ONSC to monitor compliance with the quotas of positive discrimination determined by subparagraphs 2 to 15, and in the event of non-compliance, the aforementioned office may disqualify the competitions made through the Recruitment and Selection System Uruguay Concurso. The regulatory decree of this Law adds important aspects that contribute to better compliance, at least from a planning point of view, since effective and committed compliance depends on the responsibility of each implementing body.

As mentioned above, section 6 of Law No. 19149 includes the ONSC for the enforcement of the Law, giving it the power to disqualify the corresponding competition. In this way, the ONSC receives and processes information about the implementation of this Law in the public and private sphere of public law, to which the monitoring of the control of quotas in the competitions is added. This does not completely resolve the application of affirmative action in the workplace, but it is a step forward that should be further developed by designing alternatives, incentives, and penalties for non-compliance.

The additional information provided by an evolutionary analysis, introduced in 2016, is maintained until 2019, the last year included in this work. However, only 2016 and 2017 include the data requested by MIDES regarding the surveying on training, planning, and need for advice on calls to competitions, ethnic-racial self-definition, and admission of Afro-descendant young people through the I Study and Work program. The 2018 and 2019 reports do not include this information, and one of the questions that this paper leaves unanswered relates to that.

In studying the Affirmative Action for Afro-descendants Act, the question arose as to whether there were records of the ethnic-racial variable in the public bodies required to comply with this Law, although there was certainty about a negative response. When consulting ONSC reports that include this question (2016–2017) to the public bodies, the answer was that very few of them register or plan to do so in the following year. In both years, fifteen public bodies carried out the registration of ethnic-racial self-identification (ONSC 2017). Even so, among the public bodies that did not carry out the survey, 23.4% planned to survey in 2016 for the following year, and 21.5% in 2017 for 2018. Although not in the majority, this may show the beginning of a transformation in institutional culture, probably linked to having received awareness courses, training, or having hired Afro-people. Comparing the need for advice for the hiring of people of African descent, 2017 shows a slight rise.

Most public bodies did not provide training or sensitization courses to incorporate people of African descent (ONSC 2017). While this point would merit a specific study of the reasons why the different public bodies fail to comply with this Act, it can be noted that the presence of racism among public servants is likely, that this racism is denied and therefore is not recognized as a problem, but surely the absence of leadership on the part of the highest hierarchies constitutes a factor that does not help progress in the application of this Law. In the face of naturalizations and cultural inertia, it is necessary to reinforce the mandatory condition of this Law by providing sanctions against non-compliance. Two ministries are contrasting examples of their impact on implementation: MIDES, by

encouraging the mainstreaming of the ethnic-racial variable in its plans and programs, and MTSS, which is virtually absent from the implementation process. The commitment of the MTSS to the effective implementation of actions in the workplace would be substantial. Another substantial aspect is the absence of sanctions in the event of non-compliance with affirmative action.

The 2018 report notes that this was the year in which the highest number of women of African descent were hired and that most of them are engaged in administrative, technical, and professional tasks. This information is relevant both for the living conditions of women of African descent, and to break with the stereotype that places them solely as service staff.

Through the responses provided by the public bodies to the questions included in the form, it was found that the majority have not conducted training activities (87.2%), that they have not planned any calls to competitions for the year 2018 (61.7%), and that 34.2% express the need of advice for their realization. In addition, most public bodies have not carried out or are planning to survey the ethnic-racial variable (ONSC 2017).

The development of support material and the delivery of training courses to promote the implementation of this Law are notable, but the question remains of whether the dissemination in the public bodies that should comply with this Law has been sufficient, since not many apply it, and still fewer comply with the 8%. Except for the participation in a radio program by the Department of Afro-descendant Women of MIDES, and some exhibitions on Montevideo's seafont, awareness campaigns on racism and its consequences have not been identified, nor the justification for and information on affirmative action and its objectives, in the mass media by the State. There is no known specific study about this, the guide is the information gathered by the writer on cultural policies with an Afro perspective (2011–2015), the attention to the issue in the traditional media, and the recommendation made on this in the reports of INDDHH (2019) and AGEV (2019). Although some materials can be accessed through MIDES' website, a campaign that publicizes various aspects of this Law and good practices related to its application would be relevant. Facilitating information and examples of implementation through mass dissemination, as was done in Brazil some time ago, can be attractive to those who are detached from the issue. This has become necessary since this Law does not seem to be known by some public bodies, while others seem to look sideways or delay its application. Also, some interviewees pointed out that dissemination through the ministry's website only makes it more unlikely that people of African descent would learn about this Law because of their difficulties in obtaining access to virtual tools.

One interviewee notes:

The first problem that this Law had was the issue of its dissemination, where many times, especially the collectives like us that worked at the national level or had some lines of articulation with other departments, we saw that when we posed this Law as one of the landmarks, or one of the things to work on and strengthen, especially for the empowerment of people of African descent, we saw that the vast majority of people expressed that they did not know what we were talking about (Interview 4, qualified informant, MER representative).

Another limitation, linked in part to the absence of mass dissemination of information, is the refusal to adhere to the quota because of it being considered undeserved which questions the ability of the person who is appointed for the position. This misperception or stereotype can bring the Afro-descendant employee problems in the job, because of both African and non-African peoples' lack of knowledge about the prevailing racism and the legislation to combat it.



[I]n some sectors of the population, especially in the interior of the country, ascribing to the quota was perceived negatively, because it was understood as charity. As a result, the emphasis during the first years of implementation was on raising awareness not only within the community but also among the public operators. This remains a challenge, even today (Interview 4, qualified informant, MER representative).

This testimony highlights the importance of what has been of great concern since the passing of this Act: the education and commitment of the society in its entirety are essential for the right to be effectively exercised by its beneficiaries. Racism can only be combatted through awareness, knowledge, and debate.

Several interviews draw attention to a notable point, which coincides with AGEV-OPP's assessment, about the reduced interest in the application of this Law that interviewees perceive in decision-makers, in comparison to other laws on the rights agenda. One interviewee states that, in dialog with public servants in senior positions, a common response is:

[...] "but I do not agree with affirmative action." Well, but it is not a matter of whether you agree or not, this is a national Law and therefore it must be complied with. That is the level of the arguments; they would not even consider saying they do not agree when referring to other laws (Interview 4, qualified informant, activist, MER representative).

Could it be that understanding this issue is more complex? Could the reason be the deep roots of structural and institutional racism? Erica Townsend-Bell points out that weak implementation has been a constant issue in the executive, especially in respect to legislation on equality. The author points out that not even former president Tabaré Vázquez in his second term (2015–2020), nor former president José Mujica, showed great interest in promoting the implementation of this Law. Also, it has been challenging for the Black movement to sustain a pressure campaign. Townsend-Bell also considers that this legislation does not address the issue of contemporary racism and the re-elaboration of the dominant White imagination (2021).

Whether for these or other reasons, this author has studied MER for several years now, and this problem of denial, misunderstanding, and naturalization has always been an issue. It persists because cultural changes require time, a budget, actions to make them visible, and sanctions for those who refuse to comply. The weakness of these aspects has become evident in the application of this Law. In connection to this, the decree by MIDES was decisive for the mainstreaming of the ethnic-racial variable in that body, and yet it has not been easy, because of racism and its denial. In another paper, I referred to structural cultural obstacles that hinder and delay progress on this and other rights issues, such as gender (Olaza 2017b). There, I also noted what has been pointed out in the interviews with key informants and non-African people: they all expressed concern about dissemination of information on the implementation of this Law, and today, several years later, these problems persist.

Another limiting factor stated in the interviews for this article, which coincides with one of the suggestions of AGEV(2019) and with what is discussed above, is the need to raise awareness and train public servants, mainly those linked to competitions. There also seem to be problems in the calls for competitions and the creation of the forms, for which some public bodies chose to provide awareness-raising courses. For example, the Government of Montevideo implemented courses for incoming public servants, and human resources and human management public servants, where "the need to generate a public policy and why



there was a need to generate a specific Law to try to balance that access” is made explicit (Interview 4, qualified informant, MER representative).

An interesting idea mentioned in the interviews is also to provide awareness courses for postulants. Their aim would be to empower the Afro-descendant population and to bring the problem of racism closer to those who identify themselves as but do not look Afro, at least in their prevailing phenotype.

For some interviewees, the increase in the number of civil society organizations from three to five in the advisory council, rather than broadening the perspective, was contrary to the possibility of unified action by its members. There are also disagreements regarding the delays in the implementation of this Law, the frequency of meetings of the Commission and Advisory Council, and the timing and functioning of the Implementing Commission.

Inequality remains persistent in all aspects of life for people of African descent. This was corroborated by a request made within the sphere of the State; one of the testimonies describes it as follows:

[From MIDES] we asked OPP to make an evaluation and performance report, which was done in the year 2019. A simulation was carried out, and the report revealed that if all the public bodies, even those under non-State public law—which are the least compliant with the law, because they have that figure of private-public law—would comply with the 8%, there would not be enough people of African descent qualified to cover all the vacancies because there is an educational deficit in Uruguay. This is a big issue, the educational gap in relation to the requisites and requirements of public bodies today. (Interview 6, qualified informant, member of MER).

What this interviewee states represents a fundamental problem for the insertion of Afro-descendant people in Uruguay into the workforce, closely linked to the training they gain access to. There is a knot to be untied, which is in the attainment of high school completion, but there are also other measures that could go hand in hand with increasing the chances of Afro-people gaining access to a large part of the requirements for competitions and being able to compete on a level playing field. For example, training courses could be implemented for some competitions, or the validity of priority lists could be extended for Afro-descendants in them.

## Conclusion

At the beginning of this work, the following questions were raised: How was this Law implemented within the government? How did the information reach the public servants in each institution? Does each unit have information on how many Afro-descendant public servants work there? With the information gathered, some answers have been suggested in the discussion above. It can be added that this Law is in the process of implementation, and State bodies are seeking to improve it. To date, its application has not been consistent, the majority has not reached the required 8%, and despite the guidelines in the regulatory decree, its application has been heterogeneous. Institutions do not have information on their Afro-descendant public servants, in so far as they do not record the ethnic-racial variable, and it is necessary to give greater publicity to this Law, together with the conditions for its application. As for the private-sector, this Law is not being applied yet.

As I have tried to show, alongside the limitations, there is—to a lesser extent but nonetheless encouraging—evidence of the effectiveness of training. One example is that the courses offered by the Ministry of Internal Affairs created a “network of police officers who became referents in the subject, because of having attended so many courses. So that was a positive result” (Interview 5, qualified informant, representative at MER). There was

also progress in legislation for better implementation, such as the creation of documents and improvements in reporting, as well as greater compliance with reporting. Moreover, beyond the fact that the minimum quota has not yet been effectively met, more public bodies have sought to implement this Law. However, the overall analysis of the application of this Law shows the great absence of this issue in the agenda of the Uruguayan State. So far, progress, difficulties, and some ideas for overcoming obstacles have been addressed.

The analysis of documents and the interviews carried out with qualified and key informants has evidenced the creation of a greater institutional structure linked to the implementation of Law No. 19122. Some examples are Presidential Resolution (DS/181) of 2017, that created the National Plan for Racial Equity and Afro-descendants and the Working Group on Racial Equity Policies, and Law No. 19670, on Accountability and Balance of Budget Execution, which created the National Council for Ethnic-Racial Equity and Afro-descendants. This marks progress in establishing a commission to monitor and evaluate compliance with the provisions of the Law.

Also, during the period studied (2014–2019), the presentation of the six annual reports required by this Law by the Observatory of Human Resources Management in the Government, part of ONSC, within the Presidency of the Republic, was complied with. Except for some particularities present in some of the reports, affirmative action is applied mainly for manual work and within the lower ranks of the Army. Most of the public bodies do not comply with the minimum 8 % established as a quota, although training has improved through raising awareness and training sessions. These are far from being present or taken into account by the public bodies in their planning, as are public competitions that consider quotas in their budgets. This is in addition to the failure to record the ethnic-racial composition of the current staff. All of this shows a lack of compliance with the dispositions of the decree regulating Law No. 19122.

In this regard, as mentioned above, it is a step forward that, since the 2017 report, article 4 of Law No. 19438 has been added. But what happens in the event of non-compliance? There is no answer in the legislation analyzed. In view of all of this, the State must take measures to ensure compliance.

Given the notorious absence of sanctions for failure to comply with the provisions of this Law, will changes in its regulation and alternatives to encourage public bodies to comply be necessary? For the inclusion of people of African descent to be effective, given that the requirements for them to be recruited are not always within their reach, the issue needs rethinking. It is necessary to look for creative alternatives, which would allow them to compete in the same conditions as the rest. It would be advisable to adapt the requirements for eligible funds, because most Afro institutions do not have legal entity status, hold a bank account, or are VAT registered. Likewise, for public competitions, it is necessary to think of possibilities of levelling training for those who could qualify for the quota but do not have the required training as a result of the racism that prevail in Uruguayan society.

From an institutional point of view, some of the obstacles identified in the interviews have to do with the absence of the MTSS from the monitoring commission, a ministry that should have been a significant protagonist in the implementation of this Law in the workplace. Its absence has meant, among other things, that the sub-committee on labor was never constituted.

Just as there was political will for passing the law that establishes affirmative action, that same will is required for its implementation. To decree the mainstreaming of the variable, as MIDES did in 2006, might be a good example, which could be reinforced by the intensification of awareness-raising and training courses on racism, Afro-descendants, and this Law itself, because the training courses provided have evidenced ignorance on the matter, which goes precisely against the ignorance that they are seeking to combat.

This, in turn, requires thinking and establishing who should be in charge of these training and awareness-raising courses.

The general conclusion reached by this research is that racism and its consequences are, particularly in the implementation of this Law of affirmative action for Afro-descendants, despite the work done, still far from being part of the themes that the State takes into consideration in the planning by its bodies and by those linked to it by law. To make the inclusion of this topic—which has very unfavorable consequences in the life of at least 8% of the Uruguayan population—visible, it has been suggested that some guidelines should be revised, such as implementing a penalty for the non-application of this Law in all its terms, to which I would also like to add obtaining information on the development of the competitions and a general protocol for their application. The guidelines have been a good starting point, but a protocol can be more effective, provided it is accompanied by the other measures, since this problem requires a comprehensive global solution.

To go deeper into aspects that this research leaves pending, in addition to those already mentioned, the search for and analysis of the minutes of the meetings of the process of formation of the advisory council, the Implementing Commission, and the sub-committee of education can be added. While the most prominent documents were analyzed, a supplementary examination may locate some others. According to the findings of this research, some issues remain open. For example, there is no knowledge about the application of this Law in the private sector, where, by the looks of it, the Afro population is mainly employed. Considering the characteristics and implementation problems described for the first five years of implementation of this Law, it would be pertinent to consider extending the time of its application and validity.

**Supplementary Materials.** To view supplementary material for this article, please visit <http://doi.org/10.1017/S1742058X23000139>.

## Note

<sup>1</sup> To expand on mechanisms of Racial Equity, see Olaza 2017a.

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