



International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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**Committee on the Protection of the Rights of All
Migrant Workers and Members of Their Families**
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Consideration of reports submitted by States parties under article 74 of the Convention

Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Argentina

1. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families considered the initial report of Argentina (CMW/C/ARG/1) at its 167th and 168th meetings (see CMW/C/SR.167 and SR.168), held on 12 and 13 September 2011, and adopted the following concluding observations at its 179th and 180th meetings, held on 20 and 21 September 2011.

A. Introduction

2. The Committee welcomes the submission, albeit late, of the State party's initial report and is gratified by the constructive dialogue held with its delegation. The Committee thanks the State party for its detailed replies to the list of issues and the comprehensive additional information provided by the delegation. It regrets, however, that the written replies were not submitted well in advance.

3. The Committee notes that the countries in which most Argentine migrant workers are employed are not yet parties to the Convention, which constitutes an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

4. The Committee welcomes the contributions made by non-governmental organizations in connection with the Committee's consideration of the initial report of Argentina.

B. Positive aspects

5. The Committee welcomes as positive steps the adoption of the following legislative measures:

(a) Law No. 25871 (2004) on migration (“Migration Law”), which recognizes the right to migration as a fundamental and inalienable right (art. 4), protects the right of all migrants, including those in an irregular situation, to have free access to all levels of education as well as to health services (arts. 7 and 8), and requires employers to comply with labour legislation irrespective of the migratory status of an employee (art. 56);

(b) Decree No. 616/2010 which further specifies the State party’s obligations under Law No. 25871, including its obligation to adopt measures towards regularizing the status of migrants, and expands the definition of migrant workers in line with the Convention;

(c) Law No. 26364 (2008) on the prevention and punishment of trafficking in persons and assistance to victims which defines trafficking in persons as a federal crime punishable by 3 to 15 years’ imprisonment and provides for assistance to victims; and

(d) The recent amendment to the Law on Trafficking, introducing stricter penalties for traffickers and repealing the requirement that victims over 18 years must prove that they did not initially give their consent to engage in an exploitative activity.

6. The Committee notes with appreciation the following institutional and policy measures:

(a) The National Programme for the Standardization of Immigration Documents, which allowed regularizing the status of approximately 13,000 migrants from countries outside MERCOSUR and, in a second phase (Patria Grande – MERCOSUR Programme), allowed granting permanent or temporary residence permits to more than half of the 423,711 applicants from MERCOSUR and associated countries who had previously lived in an irregular situation in the State party;

(b) The National Programme for the Prevention and Eradication of Trafficking in Persons and for Assistance to its Victims, adopted by Decree No. 1281/2007, and the establishment in 2008 of the Office for the Rescue and Assistance of Victims of Trafficking within the Ministry of Justice providing assistance to victims until they testify in judicial proceedings; and

(c) The National Plan against Discrimination adopted by Decree No. 1086/2005 and implemented and monitored by the National Institute against Discrimination, Xenophobia and Racism (INADI) under the Ministry of Justice and Human Rights.

7. The Committee notes with satisfaction the ratification by the State party of all core international human rights treaties and of all optional protocols thereto with the exception of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

8. The Committee also welcomes the State party’s ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, in 2002, as well as of ILO Convention No. 182 on the Elimination of the Worst Forms of Child Labour, in 2001.

C. Principal subjects of concern, suggestions and recommendations

1. General measures of implementation (arts. 73 and 84)

Legislation and application

9. The Committee notes that the State party has not yet made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive communications from States parties and individuals.

10. The Committee encourages the State party to intensify its efforts to obtain the approval of the National Congress for making the declarations provided for in articles 76 and 77 of the Convention.

11. The Committee notes that the State party has not ratified the ILO Migration for Employment Convention (Revised), 1949 (No. 97) and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

12. The Committee invites the State party to consider ratifying ILO Conventions No. 97 and No. 143.

Data collection

13. The Committee regrets the lack of comprehensive information and statistics on some migration-related issues, such as the number, employment situation and access to basic services of all migrant workers and members of their families, including those in an irregular situation. It recalls that such information is indispensable to an understanding of their situation in the State party and to an assessment of the implementation of the Convention.

14. The Committee requests the State party to include in its next periodic report disaggregated information on the number of migrant workers and members of their families, including those in an irregular situation, who are living in the State party, the fields and conditions of employment of migrant workers, as well as on their and their family members' enjoyment of their rights under the Convention and the Migration Law. When precise information is not available, the Committee would appreciate receiving data based on studies or estimated assessments.

Training on and dissemination of the Convention

15. The Committee notes the information provided by the State party on training for public officials on migration and human trafficking. However, it notes with concern that there is limited knowledge among judges, prosecutors, police officers, the National Gendarmerie, migration officials, labour inspectors, social workers and other public officials dealing with migrant workers about the provisions of the Convention.

16. The Committee recommends that the State party:

(a) **Continue and intensify its efforts to provide systematic training on the content and direct applicability of the Convention for judges and other public officials dealing with migrant workers, at federal, provincial and municipal levels;**

(b) **Ensure that migrant workers and members of their families have effective access to information about their rights under the Convention and the Migration Law; and**

(c) **Continue working with civil society organizations in order to disseminate and promote the Convention among all relevant stakeholders.**

2. General principles (arts. 7 and 83)

Non-discrimination

17. The Committee notes the information provided by the State party concerning the investigation of complaints about discrimination against migrants by the National Institute against Discrimination, Xenophobia and Racism (INADI). In this connection, it is concerned at reports about discriminatory attitudes towards migrants from African and neighbouring countries, particularly Senegal, Bolivia and Paraguay, media coverage associating migrants with criminal acts and abuse of social benefits, xenophobic statements by politicians, and discrimination against migrant children at school.

18. **The Committee recommends that the State party:**

(a) Adopt pro-active measures to eliminate discriminatory stereotypes about migrant workers and members of their families, in political discourse as well as in the media, by strictly applying criminal law provisions and sensitizing law enforcement officials, politicians, journalists and the general public on the discriminatory nature of such acts;

(b) Publically condemn discriminatory acts targeting migrant workers and members of their families, remind the media of its responsibility to critically report on such acts, and promote the adoption of voluntary codes of conduct by the media and other relevant stakeholders; and

(c) Ensure that teachers respect the dignity and cultural identity of migrant children, report any instances of discrimination against migrant children to the relevant authorities, and promote a culture of tolerance and respect for diversity.

3. Human rights of all migrant workers and members of their families (arts. 8-35)

19. While noting the explanation provided by the State party's delegation that the eviction of occupants from the *Parque Iberoamericano* in the city of Buenos Aires on 7 December 2010 was not related to the fact that some of the occupants were migrants, the Committee is gravely concerned about the killing of Bernardo Salgueiro, a 24-year old Paraguayan, and Rosemary Chura Puña, a 28-year old Bolivian, during the police operation. It is equally concerned that Juan Quispe, a 38-year old Bolivian, was shot to death on 9 December 2010 during a violent confrontation between citizens from neighbouring districts and occupants at the *Parque Iberoamericano*. The Committee is further concerned that the head of the City Government of Buenos Aires, rather than mediating in the conflict, publicly associated migrants with crimes such as drug traffic.

20. **The Committee urges the State party to:**

(a) Undertake a prompt and impartial investigation of the killings of the above named occupants of the *Parque Iberoamericano* and prosecute and adequately punish those responsible;

(b) Provide human rights training to police officers to ensure respect for the rights of migrant workers and members of their families; and

(c) Sensitize decision-makers on their responsibility to prevent xenophobic acts and violence and ensure their active involvement in the implementation of the National Plan against Discrimination and other programmes for the prevention of xenophobia at federal, provincial and municipal levels.

21. The Committee is concerned that migrant workers in an irregular situation are often subject to forced labour, abuse and exploitation, including inadequate pay, excessive working hours and restrictions on their freedom of movement, in particular in the textile industry, agriculture and domestic work. The Committee is also concerned that migrant women in an irregular situation who engage in domestic work are particularly exposed to exploitation, sexual violence and sexual harassment by employers due to their economic dependence and their limited access to judicial remedies.

22. **The Committee recommends that the State party:**

(a) Increase labour inspections and fines and other penalties for employers exploiting migrant workers or subjecting them to forced labour and abuse, especially in the informal economy;

(b) Monitor employment practices in the textile industry, agriculture and domestic work to ensure that migrant workers enjoy equal conditions of work as nationals;

(c) Promote migrant workers' access to employment in the formal sector, by further increasing their access to regularization procedures and to professional training opportunities; and

(d) Ensure that women migrant workers, especially domestic workers, have access to effective mechanisms for bringing complaints against employers, and prosecute and punish those responsible for abuses against them, in line with the Committee's general comment No. 1 (2010) on migrant domestic workers (CMW/C/GC/1).

23. The Committee is concerned that the National Migration Directorate (*Dirección Nacional de Migraciones*, DNM) does not consider the personal, family and professional circumstances or the length of stay of migrants in the State party when it bases expulsion orders on legal impediments to the lawful entry and stay of migrants (art. 29 of the Migration Law), such as the lack of proof of legal entry via an accredited border post. It is also concerned that by basing expulsion orders on the inability of migrants to prove their legal entry, the State party shifts the burden of proof on migrants, with the exception of those from MERCOSUR or associated countries, despite the lack of a uniform database of the DNM and despite the fact that border posts are not always adequately equipped to register the legal entry of migrants, who are not always informed about the need to keep their entry certificates. In this regard, the Committee notes that many Senegalese migrants have entered the State party's territory illegally via Brazil and that there is no Argentine Embassy in Dakar where those migrants could have obtained visas.

24. **The Committee recommends that the State party:**

(a) Ensure that prior to issuing expulsion orders, migrant workers who are unable to prove their legal entry have adequate time to apply for residence based on all relevant circumstances, in accordance with article 61 of the Migration Law;

(b) Ensure that the DNM develops a uniform database for the registration of all migrants entering the State party via an accredited border post, provides them with entry certificates, and informs them about the need to keep such certificates to apply for legal residence; and

(c) Intensify bilateral negotiations to find a solution for Senegalese migrants who entered the State party illegally, with a view to ensuring that their situation of irregularity does not persist.

25. While noting the safeguards against expulsions under the Migration Law and Decree No. 616/2010, such as automatic judicial review of all expulsion orders and the rights of migrants to appeal decisions of the DNM and to free legal assistance, the Committee is

concerned that the fact that temporary residence permits are not extended until a final decision has been taken, places them in a situation of irregularity and vulnerability.

26. **The Committee recommends that the State party extend temporary residence permits for the period during which an appeal against decisions of the DNM on the legality of a migrant's stay is pending before the competent administrative or judicial authorities.**

27. While noting that articles 7 and 8 of the Migration Law guarantee the right of free access to all levels of education and to health services for migrant workers and members of their families, irrespective of their status, and require school and health authorities to provide guidance and counselling to migrants on the procedures for regularizing their situation, the Committee is concerned that in practice, migrant children are often denied school enrolment, and migrants are denied access to health facilities, if they lack a DNI.

28. **The Committee recommends that the State party continue and scale up its training for school and health administration officials on the rights of migrant workers and members of their families, including those in an irregular situation, in relation to education and health under the Convention and the Migration Law, on possible ways to establish the identity of migrants through other documents than the DNI, as well as on the procedures for regularizing their situation.**

4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36-56)

29. While welcoming the introduction of a universal allowance for children from poor families by Decree No. 1602/2009, the Committee notes with concern that for migrant families to be eligible, both the parents and the child must have legally resided in the State party for at least three years, unless the child is an Argentine national, in which case the residence requirement still applies to the parents, who must prove the legality of their residence by presenting their national identity document (DNI) for foreigners. The Committee is also concerned about the excessive residence requirements for migrant workers applying for non-contributory pensions for mothers with seven or more children (Law No. 23746 and Decree No. 2360/1990: 15 years), disability pensions (Law No. 18910 and Decree No. 432/1997: 20 years) or old-age pensions (Law No. 13478 and Decree No. 582/2003: 40 years), despite a Supreme Court judgment of 4 September 2007 declaring the application of the 20-year residence requirement unconstitutional in a case concerning disability benefits.

30. **The Committee recommends that the State party:**

(a) **Review the required length of residence for non-contributory social benefits, with a view to ensuring their compatibility with articles 5 and 6 of the Migration Law and the National Constitution;**

(b) **Consider extending the universal child allowance to children of migrant workers in an irregular situation, in line with Law No. 26061 (2005) for the Integral Protection of Children and Adolescents which covers all children within the State party's territory; and**

(c) **Consider extending non-contributory social benefits to migrant workers and members of their families in an irregular situation in cases of extreme social vulnerability.**

5. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64-71)

31. The Committee notes with concern that the State party is a country of destination for migrants, in particular women and children, trafficked for sexual and labour exploitation. While noting the State party's efforts to combat trafficking in persons and provide assistance to victims, including legal, medical, psychological and social assistance and shelter, through the Office for the Rescue and Assistance of Victims of Trafficking and, once victims have testified in judicial proceedings, through the National Secretariat of Childhood, Adolescence and Family within the Ministry of Social Development, the Committee is concerned about:

- (a) The low prosecution and conviction rates and lenient sentences for traffickers;
- (b) The lack of coordination of anti-trafficking efforts between law enforcement authorities at federal, provincial and municipal levels;
- (c) The acceptance of bribes and collusion with traffickers by police officers and other public officials involved in the implementation of anti-trafficking measures, in particular at the provincial level;
- (d) The lack of resources of the Office for the Rescue and Assistance of Victims of Trafficking which mainly operates in the province and the city of Buenos Aires and the insufficient number of adequate shelters for trafficking victims; and
- (e) The limited effectiveness of victim identification and referral mechanisms.

32. **The Committee recalls the recommendations of the Special Rapporteur on trafficking in persons, in particular women and children (A/HRC/17/35/Add.4, paras. 93-96), and recommends that the State party:**

- (a) **Continue providing training to judges, prosecutors, police officers and border guards on migration and trafficking, victim identification, protection and assistance, victim-friendly investigation methods, and the strict application of the Anti-Trafficking Law (No. 26364);**
- (b) **Enhance coordination between federal, provincial and municipal authorities in implementing anti-trafficking measures;**
- (c) **Bring to justice public officials complicit in crimes of trafficking and provide anti-corruption training to police officers, especially at the provincial level;**
- (d) **Allocate adequate resources to the Office for the Rescue and Assistance of Victims of Trafficking and to the National Secretariat of Childhood, Adolescence and Family, extend their services and shelters to the provinces, and support NGOs providing rehabilitation and assistance to victims;**
- (e) **Provide victims of trafficking, including victims from non-Mercosur countries with an opportunity to regularize their situation;**
- (f) **Adopt checklists and protocols and train border guards, labour inspectors and migration and other law enforcement officials to ensure the prompt identification of victims of trafficking and the referral of those with protection needs to the asylum procedure; and**
- (g) **Adopt a national action plan on trafficking with measurable indicators and targets.**

33. The Committee welcomes the regularization programmes for migrants from Mercosur and associated States (*Plan de Regularización Documentaria "Patria Grande"*) and for migrants from non-Mercosur countries who are under a contract of employment (DNM regulation No. 40164/2007). However, it notes with concern:

- (a) That almost 200.000 applicants were not able to complete the regularization procedure under the *Patria Grande* programme;
- (b) Administrative barriers to regularization, such as limited access to information on the regularization procedures, administrative costs, the requirement of a permanent domicile, and the need to present a certificate of legal entry upon renewing residence permits;
- (c) The exclusion of self-employed migrant workers and of migrant workers without an employment contract from non-Mercosur countries from the regularization procedure; and
- (d) The lack of regularization criteria based on humanitarian grounds for migrants from non-Mercosur countries.

34. **The Committee recommends that the State party:**

- (a) Ensure that migrant workers and members of their families in an irregular situation have effective access to information on existing procedures for regularizing their situation;**
- (b) Facilitate migrant workers' access to regularization procedures by extending deadlines for applicants, reducing administrative fees as well as documentation requirements, and by simplifying regularization procedures;**
- (c) Review the definition of "migrant workers" to ensure that it covers self-employed workers, in line with articles 2 (h) of the Convention and article 23 of Decree No. 616/2010, to enable self-employed migrants from non-Mercosur countries to access regularization procedures; and**
- (d) Consider including humanitarian criteria among the grounds for granting residence permits to migrant workers from non-Mercosur countries.**

6. Follow-up and dissemination

Follow-up

35. The Committee requests the State party to include in its second periodic report detailed information on measures taken to follow up on the recommendations made in these concluding observations. The Committee recommends that the State party should take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to members of the Government, the National Congress and the judiciary, as well as to local authorities.

36. The Committee encourages the State party to continue its efforts to involve civil society organizations in the preparation of the State party's second periodic report.

Dissemination

37. The Committee likewise requests the State party to disseminate these concluding observations widely, including to public agencies and the judiciary, non-governmental organizations and other members of civil society, and to take steps to make them known to Argentine migrants abroad and foreign migrant workers residing or in transit in the State party.

7. Next periodic report

38. The Committee requests the State party to submit its second periodic report by 1 October 2016.
