



**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  
Fifteenth session**

**Summary record of the 167th meeting**

Held at the Palais Wilson, Geneva, on Monday, 12 September 2011, at 3 p.m.

*Chairperson:* Mr. El Jamri

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*The meeting was called to order at 3.10 p.m.*

### **Consideration of reports submitted by States parties under article 73 of the Convention**

*Initial report of Argentina (CMW/C/ARG/1; CMW/C/ARG/Q/1 and Add.1)*

1. *At the invitation of the Chairperson, the delegation of Argentina took places at the Committee table.*

2. **Mr. Peláez** (Argentina), introducing his country's initial report (CMW/C/ARG/1), said that, since the advent of Argentina's first Constitution in 1853, foreigners had been guaranteed the same civil rights as citizens and it had been illegal to restrict the entry of foreigners wishing to work or teach. The country's generous migration policy had been one of the foundations of the Republic, which was a nation built on immigration. However, that policy had not been upheld during the numerous periods of unconstitutional rule in the twentieth century, when national security had been invoked to place strict controls on the entry and stay of foreigners. Owing to the lack of migration policy at the end of the twentieth century, irregular migration had been tackled, in turn, by amnesties and clampdowns, neither of which had resolved the problems. The resulting parallel labour market had been made up of workers who had no labour rights, were often subjected to ill-treatment and had unpredictable access to health and education.

3. In 2003, the Migration Act (No. 25871) had been introduced, guaranteeing once again the constitutional rights of migrants. It set high standards for the protection of their rights and was the cornerstone of the country's social integration policy. The Act recognized the inalienable right to migrate, equal treatment for all foreigners, the same rights as citizens for migrants and their families to social services, health, education, justice, employment and social security. Moreover, it provided that all foreigners, including irregular migrants, had access to education and health care. Thus, even before signing the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in August 2004 and introducing it into domestic legislation in February 2007, the most important rights it contained had already been protected under the Migration Act.

4. Migration had also been the focus of much attention within the Southern Common Market (MERCOSUR), which had concluded the Declaration of Santiago on Migration Principles in 2004, as detailed in paragraphs 75 to 79 of the initial report. In addition, two agreements reached in 2002 on residency for the nationals of MERCOSUR and its associated States had ensured that nationals of those States who did not have a criminal record could obtain residency in all those States. Further information on the agreements was provided in paragraphs 71 to 74 of the initial report.

5. Argentina had signed the Agreement and introduced the Migration Act before the Agreement entered into force in the MERCOSUR area, without requiring reciprocity and at a difficult time, socially and economically. In 2003, unemployment had been above 20 per cent, underemployment had been about 17 per cent, 42 per cent of the population had been living in poverty and 27 per cent in extreme poverty. Despite that backdrop, the Government had taken steps to enable hundreds of thousands of undocumented migrants in the country to achieve legal status. In 2004, under Decree No. 1169, some 11,536 foreigners who did not have a criminal record and had arrived from outside the MERCOSUR area before 30 April 2004 had been granted two-year residence permits, renewable for a further two years, after which they could obtain permanent residence. The biggest challenge, however, had come from irregular migrants from within MERCOSUR and its associated States; the number living illegally in Argentina had been unknown. As described in paragraphs 86 to 89 of the initial report, the *Patria Grande* programme had

been a major success. Over 400,000 irregular immigrants had registered and by 1 June 2010 some 224,924 individuals had been granted legal residency. Under the *Patria Grande* programme and the standard admission scheme for new migrants, Argentina had granted residency to over 1 million immigrants between January 2004 and August 2011. While immigrants who had been living in the country illegally could no longer register under the *Patria Grande* programme, those from MERCOSUR and its associated States could obtain legal residency on the basis of their nationality.

6. Despite the concerns that had been voiced about such a generous immigration policy, over the previous seven years, unemployment and underemployment had decreased by about 20 per cent, the number of people living in poverty had fallen to 13.2 per cent and the number living in extreme poverty had dropped to 3.5 per cent of the population. It appeared that migration had encouraged economic activity, leading to greater job creation. Furthermore, data clearly demonstrated that the proportion of criminal sentences handed down to foreigners between 2003 and 2009 had hardly changed, suggesting that legalizing the situation of irregular migrants had not resulted in higher crime rates. Over two thirds of the foreigners who were arrested in Argentina did not live in the country, using it instead as a point of transit for drug trafficking.

7. Despite the effects of the 2008 global financial and economic crisis, the number of migrants arriving in Argentina continued to increase. The Government's migration policy took a long-term view, giving migrants and their families the security of knowing they could remain in the country for the duration of their residence permits, regardless of the ebb and flow of the economy. While Argentina had upheld the rights and guarantees enshrined in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families before ratifying it, it had modified its internal procedures, bringing them into line with the provisions of the Convention. Argentina's migration legislation was among the most progressive in the world, as demonstrated by the number of regular residence permits granted every year to those arriving in search of better employment. The Migration Act provided that employers could not cite foreigners' irregular status as a pretext for not upholding employees' labour rights. Moreover, all foreigners, including irregular migrants, had access to legal services free of charge. In 2010, the Government had strengthened its protection of migrant workers' rights by ratifying the 2007 Ibero-American Social Security Agreement, which allowed for the transfer of social security contributions. The Government was committed to combating labour exploitation and black market employment and several central and local government agencies were working to that end. Between 2008 and July 2011, the National Directorate of Migration had conducted 6,297 labour inspections, which had revealed that 23.1 per cent of migrant workers were working illegally. The workers concerned had been given 30 days to obtain legal status and some 1,574 employers had been charged.

8. His country's migration policy was open and successful, unlike those based on border controls and limited numbers of immigrants, which did nothing to stop migration flows, forced migrants into illegal situations and resulted in higher levels of human trafficking. There was a need for Governments worldwide to take steps to integrate foreigners into their societies and guarantee migrants' basic rights. Without campaigns to raise public awareness of the economic, social and cultural benefits of migration, it would be difficult to overcome the widespread prejudices and fear of the unknown that led to the xenophobic and alarmist discourse that was currently spreading irrational fear among vast swathes of society. The economic crisis should not be used by States as a pretext for restrictive policies.

9. He drew the Committee's attention to the fact that, unlike the majority of States parties to the Convention, Argentina was essentially a host country; the number of Argentine citizens living abroad was much lower than the number of foreigners living in

Argentina. His country's ratification of the Convention was therefore a significant undertaking, as had been noted by the Organization of American States (OAS).

10. **Mr. Rosales** (Argentina) said that, since the constitutional reform of 1994, international instruments had taken precedence over domestic legislation and had held constitutional status. Over the previous 25 years, Argentina had ratified almost all the United Nations international human rights instruments as well as the regional OAS human rights treaties. It had supported all the resolutions concerning migrants' rights passed by the former Commission on Human Rights and the current Human Rights Council. The Government had also shown its commitment at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and had espoused the resulting Durban Declaration and Programme of Action, as well as the outcome document of the 2009 Durban Review Conference.

11. At the regional level, Argentina had been one of four MERCOSUR member States to participate, in August 2011, in a hearing of the Inter-American Court of Human Rights to finalize a request for an advisory opinion on the protection of the rights of child migrants. That initiative had been born from deep concern about the plight of children who became economic migrants, owing partly to a lack of coordination between policies on migration and child protection.

12. In preparing the initial report to the Committee, the Government had received support from the Regional Office for South America of the Office of the United Nations High Commissioner for Human Rights (OHCHR). In addition, in June 2011, the Ministry of Foreign Relations, International Trade and Religion had hosted a workshop on the movement of persons and human rights, attended by the director and the regional representative of the OHCHR Regional Office for South America and the regional representatives of the International Organization for Migration and the United Nations High Commissioner for Refugees.

13. **Mr. Brillantes** commended the State party for its comprehensive legislation and general approach to the protection of migrants. The scope of the Migration Act was impressive, and would constitute a good model for other States. He noted that article 3 (b) of the Act provided that one of its aims was to contribute to the implementation of demographic policies on the size, growth rate and geographic distribution of the population. He would welcome an example of how that had been, or could be, achieved.

14. The Committee took note of the National Programme for the Standardization of Immigration Documents, the National Programme for the Prevention and Eradication of Trafficking in Persons and for Assistance to its Victims and the establishment of the National Institute against Discrimination, Xenophobia and Racism. It would be useful to know if the State party planned to ratify the International Labour Organization (ILO) conventions (Nos. 97 and 143) that dealt with the rights of migrant workers. The Committee would also appreciate additional data on migration flows and specific statistics pertaining to the provisions of the Convention.

15. He asked what measures the Government was taking to address the concerns of non-governmental organizations (NGOs) about migrants' rights and forced labour, particularly the question of extending or renewing temporary residence permits to ensure that due process was observed. It would also be useful to know whether the State party planned to do away with the requirement for migrants to present their national identity document in order to access health services, programmes and facilities, including hospitals.

16. The State party was required, under the Convention, to ensure the protection of its citizens living overseas. He therefore asked whether there was a coordinated policy to establish and maintain links with the 1 million Argentine citizens living and working abroad.

17. He asked what requirements prospective migrant workers from outside MERCOSUR had to fulfil in order to qualify for migrant status. It would be interesting to know whether the State party planned to remove the requirement for a minimum number of years of legal residency in order for immigrants to be eligible for old-age pensions and disability and family allowances. He also asked if the Government planned to take steps to ensure that child migrants who were non-nationals and had been legally resident for fewer than three years enjoyed the same rights as citizens. He wished to know what measures would be taken to ensure that migrant workers who had been unable to fulfil the requirements for legal residency to date would have the opportunity to regularize their situation in accordance with the law.

18. **Mr. Alba** commended the State party for its exemplary migration policy, its participation in the request to the Inter-American Court of Human Rights for an advisory opinion on the protection of the rights of child migrants and its ratification of the Ibero-American Social Security Agreement, which would help to uphold the rights of Argentine citizens living in Spain.

19. It would be interesting to know whether there was a risk of discrimination against migrants from outside MERCOSUR and its associated States. In that regard, he would be interested to hear the delegation's comments on the case of *Reyes Aguilera, Daniela v. the State*. He wondered whether all Argentine citizens who qualified for disability allowance had paid social security contributions for 20 years. If not, how could the State party justify the 20-year minimum residency requirement for foreigners in order to be entitled to that allowance?

20. He wished to know what form the introduction of the Convention into domestic legislation had taken in February 2007. It would be useful to know whether migrant workers who were granted two-year residence permits were automatically entitled to permanent residency thereafter. If so, he asked what purpose the initial two-year period served. He was interested to know what percentage of citizens who were arrested were suspected of drug-trafficking offences. He requested additional information on the status of non-resident foreigners who were detained on drug-trafficking offences in the State party.

21. **Ms. Cubias Medina** commended the State party for launching its regularization programmes at a time of economic instability, which should serve as an example to many other States. She also welcomed the State party's Migration Act, particularly its reference to the inalienable right to migrate.

22. She asked whether the Convention had ever been invoked before domestic courts by judges or the migration authorities and, if so, whether it had been given precedence in the case of incompatibility with domestic legislation or administrative considerations.

23. She wished to know how child migrants who did not have a national identity document gained access to education and health services. If they could attend school without that document, it would be useful to know whether they were allowed to remain in school and obtain qualifications on an equal footing with Argentine children. She enquired whether the education authorities and teaching staff were sufficiently aware of the problems faced by child migrants.

24. The Committee would welcome additional information on the situation of migrant workers who were self-employed and the Senegalese immigrants currently in the State party.

25. **Mr. Sevim** said he would be interested to hear the delegation's comments on reports of forced labour practices involving, in particular, Bolivian migrant workers. He would also like to know whether undocumented migrants could join trade unions and whether documented migrants were able to form trade unions and hold office in such organizations.

With regard to social security rights, he pointed out that both social assistance and social insurance benefits should be portable for Argentine nationals living abroad and migrant workers who had returned to their country of origin. Lastly, he wished to know whether Argentine citizens living abroad exercised their right to vote and whether migrants in Argentina had the right to vote, in particular in local elections.

26. **Mr. Kariyawasam** asked whether any State-aided programmes or institutions existed to help regularized migrants to participate in Argentine society on an equal basis. He also asked whether the delegation could provide a current estimate of the number of irregular migrants in Argentina. What was the Government doing to eliminate discrimination against irregular migrants from neighbouring developing countries based on certain social prejudices? He would like to know whether there were any special Government schemes or institutions to assist Argentine citizens returning from abroad in reintegrating into society and exercising their rights.

27. **Ms. Poussi Konsimbo** said that, apart from information concerning the number of migrants who had been regularized, the report lacked precise statistics on other issues covered by the Convention and specific references to case law relating to migrant workers' rights. She asked whether the Migration Act of 20 January 2004 on migration had contributed to a significant improvement in the situation of migrant workers and, if so, whether the delegation could provide specific examples of how it had been implemented. She also wished to know why it had been necessary to regularize the situation of migrant workers from MERCOSUR member States or associate States if, as indicated in the report, the nationality criterion was sufficient for nationals from those States to be able to reside and work in Argentina. She asked whether the *Patria Grande* programme had improved the effective implementation of migrants' rights and, if not, what steps the Government intended to take to overcome any obstacles to its application. With regard to trafficking in persons, she asked for detailed information on the number of victims, in particular women and children, and on the nature and effectiveness of assistance programmes for them. She would like to know whether any collective expulsions had taken place despite a prohibition on them and, if so, the reasons for them and the conditions under which they had been carried out.

28. Turning to the issue of the registration of births, she asked the delegation for detailed statistics concerning rates for the country in general and migrant workers in particular. Had any specific measures been taken to ensure that as many migrant workers' children as possible were registered at birth? She asked whether any public or private organizations existed to provide prospective migrants with information concerning their admission and stay in the country. She asked for further details on the Permanent Satisfaction Survey referred to in the report, in particular whether the findings indicated that migrants were generally satisfied with the work of the National Directorate of Migration and the Directorate for International and Social Affairs. Lastly, with regard to article 68 of the Convention, on the prevention and elimination of illegal or clandestine movements and employment of migrant workers in an irregular situation, she would like to know what penalties were provided for persons presenting forged documents in such cases.

29. **Ms. Dicko** asked for details on the report drafting process and whether all relevant actors had been involved in its preparation. She would like to know whether any system existed in Argentina for processing and analysing data on migration. She also asked whether the Government had introduced any measures to facilitate the transfer of migrants' funds to their home country.

30. **The Chairperson**, speaking in his capacity as a Committee expert, asked how the universal values which formed the basis of Argentina's migration policy were applied in practice by the various actors involved in migratory issues in such areas as education, health care, the justice system and public administration. With regard to the preparation of

the report, he enquired whether the Government had considered alternative reports drafted by civil society organizations and, if so, how it had addressed the issues raised therein. It would be interesting to know how the Government analysed the link between regularization and crime. He would also like to know how the Government defined the term “irregular migrant”. For example, did it include migrant workers who had previously been in a regular situation? Noting that the economic crisis had apparently not led to a reduction in migration flows, he asked whether recently regularized migrants had been counted as new arrivals for statistical purposes. He requested further information on the investigation and monitoring schemes mentioned by the delegation. He also asked how the Government coordinated the implementation of legislation to ensure respect for the guiding principles on which it was based. Were some rights contained in the Convention particularly difficult to implement? What measures could be envisaged to enforce those rights? Could the delegation provide any examples of judges who had cited the Convention in their rulings? With regard to the issue of nationality, he asked whether any rights, such as the right to vote, were granted to citizens of particular countries on the basis of reciprocal agreements. Lastly, he asked the delegation to comment on reports that during an operation to expel a group of migrants from a public park in Buenos Aires on 7 December 2010 three individuals had been killed by the police and that the head of the local government had described those occupying the park as criminals and drug traffickers.

*The meeting was suspended at 4.55 p.m. and resumed at 5.15 p.m.*

31. **Mr. Manzanares** (Argentina), replying to a question on the demographic aspect of migration policy, said that over the past 100 years population growth rates had been significantly lower than forecast. According to the 2010 census, the population of Argentina was approximately 40 million, a figure that fell far short of the total of 100 million that had been predicted in 1910. Population distribution was uneven: with 50 per cent of the total population currently living in the city and province of Buenos Aires, large areas of the country remained relatively underpopulated. Furthermore, an ageing population and a decreasing fertility rate meant that it would be difficult to maintain the social security system at current levels. Argentina therefore needed and welcomed new immigrants. The law on migration, which reflected constitutional provisions in that regard, had been designed to promote immigration and territorial development.

32. Turning to the question on the possible preferential treatment given to nationals of MERCOSUR member States or associate States with regard to the granting of residence permits, he said that a nationality criterion had been introduced into Argentine legislation. Under the Migration Act, all those persons who had been born in or were nationals of those States were entitled to reside in Argentina. Currently 82 per cent of immigrants came from those countries. The only residence requirement for those nationals was that they had to demonstrate that they had no criminal record in either their home country or Argentina and that they paid a fee of approximately US\$ 60. However, the fee could be waived if the person concerned could not afford to pay it. Immigrants were then granted a temporary residence permit valid for two years, after which time they would be granted a permanent residence permit provided that they continued to have no criminal record in Argentina. The remaining 18 per cent of immigrants who came from the rest of the world were required to indicate the purpose of their stay in Argentina. If they met one of the admission criteria they would be issued with a temporary residence permit which was valid for one year and renewable; after three years of continuous residence, a permanent residence permit could be granted.

33. According to current estimates there were between 2,000 and 3,000 Senegalese citizens in Argentina who were in an irregular situation, having entered the country illegally from Brazil, where they had been legally resident. The Government was seeking a friendly settlement of the matter through bilateral discussions with Senegal and contacts with the

Senegalese community in Argentina. A dialogue was also under way with the authorities in the Dominican Republic concerning nationals of that country who had entered Argentina illegally and been involved in prostitution. The situation was complicated by the fact that a number of cases involved trafficking in persons. In practice, however, when such cases were investigated or brought before the courts, it was enough for the prosecutor or judge to inform the National Directorate of Migration that the person concerned was allegedly a victim of trafficking for a temporary residence permit to be granted on humanitarian grounds.

34. With regard to labour-related issues, he said that all temporary or permanent residence permit holders were authorized to work in Argentina. The Convention was applied equally to all migrants irrespective of their State of origin; furthermore, fundamental human rights were not conditional upon regularization and many of the rights enshrined in the Convention, such as the rights to education and health, were applied regardless of migrants' legal status. Employers had the same obligations towards irregular workers as towards other workers. Although irregular migrant workers were not subject to sanctions, penalties were imposed on their employers. In accordance with article 49 of the Convention, a residence permit remained valid even if the migrant worker lost or left the job for which it had been granted.

35. The Migration Act did not recognize the category of "self-employed worker" as a criterion for establishing residence in Argentina. However, any immigrant who was in possession of a permanent residence permit could choose to engage in self-employed work. Only temporary residence permit holders who were not nationals of MERCOSUR member States or associate States were not authorized to undertake such work.

36. With respect to the question of non-resident foreigners detained for drug-trafficking offences, he said that those persons were generally in transit through Argentina and were detained at airports or frontier posts during customs checks.

37. The term "irregular migrant" referred to persons who had never previously been in a regular situation. The only way of determining their number was by carrying out labour inspections; those indicated that 23 per cent of migrant workers were in an irregular situation. When irregular migrants were detected, they were notified by the National Directorate of Migration that they should regularize their situation within a reasonable time period. If they failed to do so, an administrative expulsion order was issued and the person concerned notified. A number of remedies were available to migrants: they could ask the relevant official to reconsider the decision, take the matter to a hierarchical superior, appeal to the Minister of the Interior or request a judicial review. Even when all those remedies had been exhausted, the National Directorate still had to seek the approval of a federal judge to authorize the detention of the migrant prior to expulsion. Over the past four years, only 17 migrants had been expelled from Argentina on account of their irregular status. Detainees in that situation were not held together with common criminals and no collective expulsions had taken place.

38. The *Patria Grande* programme had made a significant contribution to a decrease in the number of irregular migrants in the country. More than 420,000 immigrants had registered under the scheme and, to date, approximately 270,000 had been regularized. There were a number of reasons why some migrants had not yet followed up on their initial registration: some had already left the country; others were living in remote areas and had not yet been able to present the necessary documents, even though the National Directorate had offices throughout the country; and, as some benefits were available to migrants irrespective of their status, some simply did not see the need to proceed with the regularization process until they were faced with a specific problem.

39. Despite the economic crisis, Argentina continued to be an attractive destination for migrants because of the access it offered to basic social benefits such as health care and education. The calculation of migratory flows was based on a person's last entry into the country and did not include recently regularized migrants.

40. Referring to the incidents that had occurred in the Parque Ibero-Americano in Buenos Aires, he said that it had been occupied by both Argentine citizens and foreign migrants on account of housing problems and not because of migration-related issues. It was true that the head of the local government had made statements with xenophobic overtones, but it was also true that the national Government had countered his remarks and made it extremely clear that it did not share his views. Furthermore, during the occupation, officials from the National Directorate of Migration had been present in the park day and night in order to help irregular migrants to regularize their situation.

41. His delegation took note of the comments made by experts concerning the need for more detailed statistics in the report.

*The meeting rose at 6 p.m.*