



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 Thirty-first session

Summary record (partial)* of the 431st meeting

Held at the Palais Wilson, Geneva, on Monday, 2 September 2019, at 3 p.m.

Chair: Mr. Tall
later: Mr. Ünver (Vice-Chair)

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* No summary record was prepared for the rest of the meeting.

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The discussion covered in the summary record began at 3.25 p.m.

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

Second periodic report of Argentina (CMW/C/ARG/2; CMW/C/ARG/QPR/2)

1. *At the invitation of the Chair, the delegation of Argentina took places at the Committee table.*
2. **Mr. García** (Argentina), introducing his country's second periodic report (CMW/C/ARG/2), said that Argentina had always been and would continue to be a country that welcomed migrants with open arms. The numbers spoke for themselves: during his years in office alone, the Government had granted more than 805,000 residence permits. Migration was a multifaceted phenomenon that had to be tackled holistically. Any attempt to reduce the impact of migration in only one area was necessarily oversimplistic. One challenge was striking a balance between the causes of migration flows – such as unemployment, low incomes and a lack of opportunities in countries of origin – and the capacity of host countries to settle migrants in decent conditions. The Argentine State had deployed efforts to direct immigrants towards areas where work was available and where their enthusiasm and skillsets were most needed.
3. Although most immigrants were motivated by economic aspirations, preventing persons in conflict with the law from entering the country remained a legitimate concern, as did ensuring that foreign nationals who were clearly plotting to break the law were not allowed to remain. Argentine immigration law, like that of almost all countries in the world, provided that persons with a criminal record were barred from obtaining immigrant status. It was therefore important to actively exchange information with other countries regarding criminal activity, so that criminals could not take advantage of the mobility facilitated by migration. Experience had shown that international criminal organizations were capable of swift movement and coordination, in stark contrast to the torpid pace of cooperation between States.
4. The Government's immigration legislation prioritized the following lines of approach: regularization of migration status to ensure immigrants' access to rights and compliance with their obligations; redirection of migration flows to areas where foreign expertise was needed, in coordination with provincial authorities; expulsion of migrants who engaged in criminal activity; and solidarity with persons who had been forced to leave their countries for humanitarian reasons. With regard to the latter, the State had been working to streamline its procedures for the allocation of humanitarian visas to persons in need of assistance, within the limits of its capacities, in cooperation with civil society and international organizations.
5. Regional cooperation was an important political tool for economic and social development, governance and international employment opportunities. Argentina played a leading role within the Southern Common Market (MERCOSUR). Nationals of countries that formed part of the expanded MERCOSUR, including the Bolivarian Republic of Venezuela, could obtain a residence permit solely on the basis of their nationality and a clean criminal record. Thanks to the simplicity of the application procedure, the Government had been able to grant 170,000 residence permits to Venezuelan nationals seeking shelter from the economic, social and political crisis currently engulfing their country. In cooperation with the provincial authorities, those migrants were being directed towards areas that could benefit from their expertise.
6. The Government had also launched an online platform to process entry and residence applications, which provided the authorities with additional information regarding those entering the country. Related measures included the establishment and implementation of a digital migration management system, known as RADEX, through which immigrants could administer their residence applications and details online; the establishment of an electronic travel authorization procedure, known as AVE, and the introduction of advance passenger information, passenger name record and biometric travel document control systems; the conclusion of bilateral and regional information exchange agreements; and the establishment of three migrant and refugee orientation centres. The Government was also currently expanding its Syrian refugee programme.

7. He wished to place special emphasis on the unilateral measures that the State had taken to assist and show its solidarity with the Venezuelan people. Such measures included accepting expired Venezuelan identity documents as valid forms of identification for entry into the country and application for residence permits; setting aside the requirement for Venezuelan migrants to present a criminal record certificate; and accepting birth certificates as a valid travel document for Venezuelan children under the age of 9 accompanied by one of their parents. Measures had also been taken to facilitate the certification of academic qualifications. Venezuelan nationals were not required to obtain visas, and health care and education were free for everyone.

8. Argentina had hosted the Fourth Meeting of States participating in the Quito Process, where its delegation had presented five projects to participating countries, namely: the introduction of regional mobility cards to provide Venezuelans travelling through the region with a valid form of identification; the establishment of reception centres in border zones; the establishment of orientation centres, which would offer information services, workshops, guidance and training; the introduction of a human capital development platform to facilitate the pairing of migrants with job opportunities in various countries; and the strengthening of refugee agencies. The Government hoped to make those projects a reality at the regional level, with support garnered through international cooperation.

9. **Ms. Landázuri de Mora** (Country Rapporteur) said that, according to the State party's report, one of the State's objectives was to promote the well-being of all inhabitants and foster a more egalitarian and peaceful society. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families took that as a positive sign, since, with such a commitment as a starting point, it would be possible to hone in on specific critical issues in relation to migration in the country. In recent years, the Committee had been optimistic that domestic legislation in Argentina would continue towards harmonization with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. However, Argentine migration law had recently been amended by Emergency Decree No. 70/2017, which had raised serious concerns within the Committee. Other treaty bodies, such as the Committee against Torture and the Committee on the Rights of the Child, had already urged the State party to repeal the Emergency Decree, which restricted equal access to social and public services and the equal enjoyment of rights, such as the right to family reunification. She was therefore interested to know what measures the State party had taken to repeal Emergency Decree No. 70/2017. Moreover, the Committee had been informed that legislation had been passed at the provincial level that restricted the rights of migrants. In that connection, it would be useful to know what steps the State party had taken to harmonize provincial legislation with federal legislation and to ensure its compliance with the Convention.

10. The Committee had received reports of discrimination against migrants belonging to minorities, primarily persons of African descent and lesbian, gay, bisexual, transgender and intersex persons, including police harassment and widespread stigmatization. In that regard, she wished to know what measures the State party had taken or planned to take to put an end to racial profiling, to prevent stereotyping on the basis of sexual identity and to eliminate police violence towards migrants, especially towards migrants belonging to vulnerable groups. Similarly, the Committee was deeply concerned about public statements made by the authorities associating migrants with criminal activity. Such stigmatization often led to the persecution of migrants by the public and to widespread discrimination against migrants by public officials. The State party should carefully review the way in which public officials and representatives referred to migrants.

11. The claim made in the periodic report that Argentina maintained an open arms policy towards migrants seemed inconsistent with the fact that expulsions had nearly doubled over the previous two years. She wished to know what steps were being taken to ensure respect for due process in expulsion procedures and how the State could justify expelling migrants merely on the grounds of possessing a criminal record, even when the persons concerned had already served their debt to society and had lived in Argentina for many years.

12. The Committee was aware of 125 appeals currently before the courts regarding expulsion orders, many of them arising from prior criminal convictions, against migrant women with Argentine children or grandchildren. She was particularly concerned that the

orders seemed to take no account of the specific situation of the women, some of whom were single parents or had been victims of violence. She would be interested to hear about any plans to annul expulsion orders that had split up families and to readmit persons who had been expelled under such orders. She hoped that the delegation could provide details about any current expulsion orders that placed the unity of families at risk and, in particular, about the cases of, inter alia, Vanessa Gómez Cueva, Jhonny Quiróz, Wilfredo Acuña Rospilloso, Liz Moreta, Paola Alegre and María Torrez.

13. Notwithstanding the fact that migrants and nationals had an equal right to family unity, the Committee was particularly concerned that, through the enforcement of expulsion orders, the State was pursuing a migration policy that effectively penalized its own citizens, violating the right of Argentine children to live with their migrant parents. She wished to know how the authorities evaluated the best interests of children in such cases, how they could justify State-sanctioned measures that destroyed families and which entity was responsible for providing redress for the psychological damage such a course of action was inflicting on children.

14. **Mr. Botero Navarro** said that the Committee had been pleased to learn about recent progress in the State party, such as the granting of residence permits to 805,000 migrants, the use of new technologies to facilitate access to migration procedures and the provision of education and health care to migrants free of charge. He also wished to commend the Government for its programme to admit migrants from the Syrian Arab Republic and for the leading role it had played in the framework of the Quito Process. In that connection, he would be interested to hear more about the regional mobility card.

15. He shared the concerns expressed by Ms. Landázuri de Mora regarding the implementation of Emergency Decree No. 70/2017. In that regard, he would be interested to learn how the authorities sought to strike a balance between, on the one hand, protecting the legitimate interests of the State by expelling a certain individual who had perhaps committed a crime and, on the other, safeguarding the right to family and private life and the best interests of children, including Argentine children. In particular, he wished to know if any action had been taken to suspend the implementation of the Decree, in the light of a recent court ruling that had found it to lack a constitutional basis.

16. The Committee had received reports pointing to the use of racial profiling techniques by police when dealing with migrants, particularly persons of African descent and groups such as Peruvians and Bolivians, and to the existence of obstacles faced by migrants who were not from States belonging to the Southern Common Market (MERCOSUR). In the light of those concerns, he hoped the delegation could assure the Committee that migrant control measures did not violate the principles of non-discrimination and equality. He would like to receive assurances that migrants enjoyed access to the full range of economic, social and cultural rights on an equal footing with Argentine citizens and, specifically, he wished to know if any steps had been taken to annul a recent law in the province of Jujuy under which migrants with temporary residence status were being charged for health services.

17. While welcoming the introduction of technological platforms to accelerate the procedures whereby migrants could regularize their position, he would appreciate assurances that poorer migrants and those who did not have easy access to the Internet were not being disadvantaged. Lastly, he wished to know if the authorities had taken any steps to enable self-employed migrants to gain access to regularization procedures, as the Committee had suggested in paragraph 34 (c) of its 2011 concluding observations on the initial report of Argentina (CMW/C/ARG/CO/1).

18. **Mr. El-Borai** said that he wished to know whether the Supreme Court of Justice had, in fact, declared Emergency Decree No. 70/2017 to be unconstitutional. If so, and if the Decree continued to be applied, what did that say about the value of Supreme Court rulings in the State party?

19. **Mr. Charef** said that he had recently had occasion to visit the Museum of Immigration in Buenos Aires where he had discovered to his surprise that little or no space was dedicated to migrants of African descent or to migrants from other countries in South America. Could the delegation explain the reasons for that omission, which was also a form of discrimination?

20. **Mr. Kariyawasam** said that there was a disturbing backlash against migration across North and South America. Xenophobia appeared to be on the increase and there was a growing tendency to equate migrants with criminality. Such phenomena were often linked to the media, which were the main vehicle of communication with the population at large. He would be interested, then, to know if the Government had any plans to encourage media outlets to fight discrimination, promote a more positive image of migrant workers and their rights and steer the public away from xenophobic attitudes.

21. The Committee would be interested to hear more details about the numbers of Argentine migrant workers abroad and what consular facilities were available for them, particularly in the United States of America. Did the Government have any programmes to promote the reintegration of migrant workers returning to Argentina?

22. **Mr. Oumaria** said that the Committee, out of concern at the relatively low rate of ratification of the Convention at the international level, envisaged harmonizing the provisions of the Convention with those of the Global Compact for Safe, Orderly and Regular Migration, otherwise known as the Marrakesh Migration Pact, with the aim of tackling the root causes of migration. In that connection, he wondered whether the delegation, by referring to the country's need to strike a balance between the economic interests of Argentina and the country's search for migrants, was implying that the country was implementing selective migration. He also wished to receive reassurance that, in cases of expulsion, the Government adhered to the relevant provisions of the Convention, including that the expulsion was by court order and that the consular services of the migrant's country were informed of the decision.

23. The welcoming of Syrian migrants by Argentina was laudable and could perhaps be extended to persons fleeing other places of conflict. Lastly, he wondered whether migrants from countries that were not part of the Southern Common Market (MERCOSUR) enjoyed the same rights and privileges as those who did hail from MERCOSUR countries.

24. **Mr. Taghi-Zada** said that he would like to receive numerical data on migration flows from and into Argentina, and on the respective countries of destination and origin.

25. **Mr. Soualem** said that he wondered whether an independent authority ensured that federal states were implementing the Convention and, if such an authority existed, what steps it had taken so far. He wished to remind the delegation that a State party's ratification of an international treaty was a commitment that could not be cast aside due to changes in political power. He would also be interested to find out whether steps had been taken to raise public awareness of the Convention and whether a media watchdog was in place and, if so, what action it had taken in response to xenophobic media reports. Had it, for example, imposed sanctions on media outlets or brought legal proceedings against them for spreading xenophobia?

26. **Ms. Dzumhur** said that she would like to know what steps the Government would take to ensure that legislation affecting migrant workers was harmonized at the national and provincial levels and that it met international standards. She would be grateful to receive statistics on migration, and to learn how such data were collated and shared between the provincial and national levels. It would be useful to receive information on asylum procedures for migrant workers, including migrants with irregular status. She would also like to know whether an independent mechanism monitored asylum applications and what the role of the national human rights institution was in that respect; whether migrants could file complaints with the national human rights institution and, if so, how many it had received thus far, and how many reports, if any, it had produced. Given that relevant national legislation did not meet international standards and that provincial and national legislation was not harmonized, she wondered how migrants could request direct implementation of the provisions of the Convention. Lastly, she would like to be informed to what extent judges and other judicial staff received training on the direct application of international standards, including those contained in the Convention.

The meeting was suspended at 4.45 p.m. and resumed at 5.10 p.m.

27. *Mr. Ünver (Vice-Chair) took the Chair.*

28. **Mr. García** (Argentina) said that, of the 805,000 migrants who had settled in Argentina, only 2,200, or 0.25 per cent, had been expelled. Through the media, the National Migration Directorate conveyed its clear position that migrants came to Argentina to work, produce and study – not to commit crime. While Act 25.871 did contain an element to promote human rights, it also contained a restrictive element for the small minority of migrants who broke the contract of trust with Argentina. The Government needed a procedure that was logical, rapid, balanced and fair in order to deal with such persons. Such a procedure would also help to change negative attitudes towards migrants.

29. Most of the expulsions referred to by the Committee had been carried out tardily, as they had been ordered in accordance with Act 25.871 by previous administrations, involving persons who did, in fact, deserve to be expelled from the country. Vanessa Gómez Cueva, for example, ought to have been expelled when halfway through her prison sentence, but had not been expelled until much later due to the ineffectiveness of the previous expulsion procedure. Emergency Decree No. 70/2017 had, therefore, been introduced to accelerate the process. It was worth remembering that migration cases were relatively simple to process and that all expulsion decisions by the National Migration Directorate were subject to judicial review. The Government had, in fact, addressed the humanitarian issues surrounding the case of Vanessa Gómez Cueva, enabling her to appeal despite expiry of the time limit for doing so. The previous Government's decision to expel her and prohibit her re-entry into the country had again been upheld, since the law stipulated that the family reunification criterion was inoperative in the case of the commission of a serious crime, such as drug trafficking. Nevertheless, given the exceptional humanitarian issues surrounding her case, the Government had recently decided to make an exception to enable Vanessa Gómez Cueva to re-enter the country. It maintained, however, its steadfast commitment to protect Argentina from organized crime and staunchly defended the rights of its citizens and of migrants working to build a better society.

30. Argentina remained open to migrants from the world over; the Government worked regularly, for example, with the consular services of Bolivia, in view of the fact that Bolivian nationals did the lion's share of work in the Argentine fruit sector. The RADEX system had been set up the previous year after the Government had observed that many migrants were in an irregular situation – some for up to 15 years – due to previous laws. However, the Government's fight was against irregular migration, not irregular migrants. The Government would work with the Committee in order to find a swift, fair and balanced way of dealing with the very small minority of migrants who broke the contract of trust.

31. **Mr. Enríquez** (Argentina) said that, despite the rejection of Ms. Gómez Cueva's administrative, civil and criminal appeals, she would be allowed to return to Argentina and her legal representative had been notified.

32. It was not currently possible for the executive to repeal Emergency Decree No. 70/2017 because its constitutionality was being considered in a case before the Supreme Court. The Decree, which included a sunset provision and had been approved by the Bicameral Standing Commission of Congress, had been promulgated following a Supreme Court decision of 2015, in which the Government had been invited to take urgent measures to bring drug trafficking under control. In a single decision, a lower federal court had found that the Decree was unconstitutional because the drug trafficking situation did not constitute an emergency. The executive had appealed to the Supreme Court, which would make the final decision.

33. In practice, the three-day deadline for the administrative appeal of deportation orders under the Decree was actually seven to nine days, because the defence lawyers were given additional time to familiarize themselves with the case. All persons subject to deportation were guaranteed a lawyer and would be provided with a public defender if necessary. Nobody could be expelled for violations of the Migration Act without judicial review by at least the Federal Administrative Court. It was also possible to bring an extraordinary appeal before the Supreme Court.

34. Pursuant to the Decree, persons subject to deportation must receive notification in writing, with translation provided if necessary. Failing that, the original deportation order and all subsequent decisions confirming it became null and void. That right had been

introduced in the Decree and was not stipulated in the Migration Act. Most current deportation cases involved persons who had been convicted of drug trafficking offences. The commission of such serious crimes had already been grounds for expulsion under the Migration Act; the Decree had only expanded the range of applicable offences.

35. The first and second instance courts had approved 2,400 decisions to issue deportation orders under the Decree. Further up the legal system, 99 per cent of extraordinary appeals had been rejected as inadmissible. In addition, in almost 85 per cent of expulsion cases, the defence lawyer had submitted a habeas corpus writ before a criminal court. The criminal courts were empowered not only to quash a deportation order but also to prosecute the officials concerned on charges of unlawful expulsion. No such prosecution had been initiated.

36. A negligible proportion of migrants had been issued such orders compared to the number who had settled legally; the National Migration Directorate was obliged to ensure that the law was enforced, while at the same time fulfilling its primary role to promote migration and encourage integration.

37. Some problems had arisen in relation to members of the Senegalese community who engaged in street trading without a permit, especially in Buenos Aires. Thus far, the local authorities had not managed to convince them to obtain the appropriate registration. Most of them had entered Argentina illegally and then attempted to regularize their situation through the National Commission for Refugees (CONARE). Since their reason for leaving Senegal was economic, they did not qualify as refugees under international law. Furthermore, as many Senegalese traders sold identical goods, officials had concluded that they were engaged in trafficking and smuggling. In 2013, the Government had launched a regularization plan, which had resolved the status of only 1,781 Senegalese persons out of the 5,000 counted in the official statistics. It was estimated that a further 5,000 were not covered by those statistics. The Buenos Aires authorities had proposed to transfer them to other locations where they could trade legally or retrain. That offer had been accepted by some and rejected by others. There might have been isolated cases in which the police had used excessive force when applying the orders of the judicial authorities, but such cases were investigated and prosecuted. Awareness-raising workshops had been made available to members of the Senegalese community to encourage them to retrain to seek permits for trading. Illegal entry had decreased and the remaining issues were being resolved with the help of community leaders.

38. **Mr. García** (Argentina) said that the National Migration Directorate could act as an intermediary in disputes involving Senegalese migrants and other government departments. Even if all the Senegalese had a regular migration status, the problem would not be solved, because they would still be trading in violation of local regulations. The only solution was to raise awareness among the migrants of their rights.

39. **Mr. Enríquez** (Argentina) said that international human rights law did not require family unity to be maintained when a crime had been committed; convicted criminals could be deported even if that entailed breaking up a family. However, such decisions were not taken lightly. The National Migration Directorate had highly experienced social workers who assessed claims that deportation would breach the right to family unity. If the social workers found that a person should not be expelled, the judge would accept that assessment and would not order expulsion. Such an evaluation had been carried out in all the cases raised by the Committee that were currently before the courts. Criminals often raised family unity as a pretext, even though they had not lived with their families for a long time. It was necessary to differentiate between situations in which the principle of family unity was invoked dishonestly to circumvent the Migration Act and cases in which a deportation really would break up a family. In the case of Ms. Gómez Cueva, the National Migration Directorate had overturned the expulsion decision on humanitarian grounds.

The meeting rose at 6 p.m.