



**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**

**Information received from Argentina on follow-up
to the concluding observations on its second
periodic report***

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* The present document is being issued without formal editing.



I. Methodology

1. The present report was prepared by the National Directorate for Matters Relating to International Human Rights Law of the Secretariat for Human Rights of the Ministry of Justice and Human Rights, in accordance with guidelines and contributions from the National Migration Directorate, a decentralized body that reports to the Ministry of the Interior. Contributions from the Ministry for Women, Gender and Diversity have also been incorporated to ensure that the report reflects a gender perspective.

II. Introduction

2. On 10 December 2019, a new Government took office in Argentina. The current President, Alberto Fernández, expressly affirmed in his earliest public statements that the defence of human rights would be the cornerstone of the policies to be adopted in Argentina.¹

3. In this context, the Government returned to the precepts set out in the National Migration Act (No. 25.871), which provides that individuals have an essential and inalienable right to migration and that the Argentine Republic guarantees this right on the basis of the principles of equality and universality.

4. Recently, at the seventy-fifth session of the General Assembly, in the Argentine President's first statement before that body since his election, he once again stressed the need to prioritize human rights above all else and warned that the global crisis caused by the coronavirus disease (COVID-19) pandemic could exacerbate the serious migration crisis that was affecting the world, including Latin America, and that the response must be to promote and safeguard the human rights of migrants.²

5. In this regard, the State has taken a series of measures to stem the spread of COVID-19 and mitigate its impact on health in order to protect the entire population, particularly the most vulnerable groups in society.

6. Mandatory preventive social isolation was introduced on 20 March 2020 by Decree No. 297/2020.³ For reasons of public health, it was extended until 11 October 2020 under Decree No. 754/2020,⁴ with the extension being implemented in different stages in response to the epidemiological situation. Migration services were classified as essential services during the emergency.

7. In the context of the pandemic, the National Migration Directorate, the agency responsible for implementing the National Migration Act (No. 25.871), performed exceptional and crucially important functions.

8. The Directorate is carrying out specific actions to support the health authorities at entry points on the country's borders in their efforts to detect, assess and refer suspected cases of COVID-19 and ensure that migrants may fully exercise their rights during the emergency.

9. This situation has had an impact on the agency's functioning and activities. It is against this backdrop that the present report should be read.

¹ Address given by the President on 1 March 2020 at the opening of the 138th ordinary session of Congress. Available at <https://www.casarosada.gob.ar/informacion/discursos/46746-discursodel-presidente-alberto-fernandez-al-encabezar-la-apertura-del-periodo-138-de-sesiones-ordinarias-del-congresode-la-nacion>.

² Statement made by the President on 22 September 2020 at the seventy-fifth session of the General Assembly. Available at <https://www.casarosada.gob.ar/informacion/discursos/47157-palabras-del-presidente-de-la-nacion-alberto-fernandez-en-el-el-75-periodo-de-sesiones-de-la-asamblea-general-de-naciones-unidas-traves-de-videoconferencia>.

³ The full text of Decree No. 297/2020 is available at <https://www.argentina.gob.ar/normativa/nacional/decreto-297-2020-335741>.

⁴ The full text of Decree No. 754/2020 is available at <https://www.argentina.gob.ar/normativa/nacional/decreto-754-2020-342365>.

III. Follow-up information

10. In paragraph 56 of the concluding observations adopted by the Committee at its 443rd meeting, held on 11 September 2019, the Argentine State was requested to submit follow-up information on the implementation of the recommendations contained in paragraphs 11, 31 and 33. The information requested may be found below.

A. Follow-up information relating to paragraph 11 of the concluding observations

11. In January 2017, the former President issued Emergency Decree No. 70/2017, amending Act No. 25.871 and the Citizenship Act (No. 346).

12. Aside from the Committee, other human rights treaty bodies, such as the Committee against Torture,⁵ the Committee on the Rights of the Child⁶ and the Committee on Economic, Social and Cultural Rights,⁷ have expressed concern about this law.

13. The decree is currently under consideration by the Supreme Court within the framework of the collective *amparo* action filed by the Centro de Estudios Legales y Sociales and others against the National Migration Directorate under the *Amparo* Act (No. 16.986), file No. 3061/2017, in connection with which the constitutionality of the decree is being examined with erga omnes effects. The outcome of this case could change the legal situation with regard to the decree's application.

14. Nonetheless, the National Migration Directorate currently takes a rights-based approach when applying the regulations in force, guaranteeing the migrant rights that are recognized in national law and international human rights treaties.

15. In this connection, the Directorate has launched a case-by-case review of administrative proceedings in which a deportation order has been issued against a migrant without the person's having received notification of the administrative decision as a result of the application of article 54 of Act No. 25.871, as amended by Decree No. 70/2017.⁸

16. The case review conducted by the National Migration Directorate is to be completed before any administrative detention is ordered. In other words, if it is determined that there has been a failure to provide proper notification of an administrative decision to deport a migrant, the notification is reissued in order to ensure that the migrant may exercise his or

⁵ Cf. Committee against Torture, CAT/C/ARG/CO/5-6, 24 May 2017. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fARG%2fCO%2f5-6&Lang=en.

⁶ Cf. Committee on the Rights of the Child, CRC/C/ARG/CO/5-6, 1 October 2018. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fARG%2fCO%2f5-6&Lang=en.

⁷ Cf. Committee on Economic, Social and Cultural Rights, E/C.12/ARG/CO/, 1 November 2018. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fARG%2fCO%2f4&Lang=en.

⁸ Article 54 of Act No. 25.871, as amended by Decree No. 70/2017, provides that: "Foreign nationals shall inform the authorities of their address in the Argentine Republic. The address that will be considered valid for all legal purposes, and for the purposes of all notifications, is that communicated to the authorities upon entry into the national territory, that registered in the course of migration inspections or that specified in connection with residency procedures or reported to the National Registry of Persons. An address must be specified in all dealings with the immigration authorities. In all cases, notifications are considered to be valid if they are served at the last recorded address. If no address has been recorded, or the recorded address does not exist, decisions issued by the National Migration Directorate are automatically considered to have been duly notified two working days after issuance; the decisions are available at the reception desk of the Directorate. The use of electronic media is authorized for all immigration procedures and notifications in accordance with the regulations implementing this Act. Addresses recorded in the corresponding administrative proceedings are considered valid in judicial proceedings."

her right to a defence, in accordance with the Constitution, international human rights treaties and jurisprudence in this area.

17. It should also be noted that the current Government does not order preventive administrative detention, i.e. administrative detention before a deportation order becomes final. Even when a deportation order is final, administrative detention is ordered only when strictly necessary, that is, when a person does not leave the country voluntarily despite having exhausted all avenues of defence.

18. This approach is demonstrated by the fact that, so far in 2020, administrative detention has been used in only 2.2 per cent of deportation cases, while voluntary departures accounted for the remaining 97.8 per cent of cases.

19. The National Migration Directorate analyses each case in which a person has entered Argentina unlawfully. If the person concerned turns out to have Argentine children of minor age, then he or she is urged to regularize his or her immigration status in order to avoid any measure that might result in a deportation order.

20. The Directorate applies the exceptional exemption procedure provided for in article 29 in fine of Act No. 25.871,⁹ under which persons who have entered the country in an irregular manner may invoke a link with an Argentine citizen. In this regard, the Administration upholds the principles of family reunification and, in particular, the best interests of the child by authorizing the exemption provided for in the legislation in force.

21. In exercise of its powers under article 90 of Act No. 25.871, under which it is authorized to review decisions of its own accord or at the request of a party, the National Migration Directorate considers cases involving deportation orders that are based on administrative irregularities for which the party concerned is responsible or on criminal records that are considered to have expired, provided that the principles of family unity and the best interests of the child are invoked.

22. The position adopted by the Argentine State in relation to communication No. 90/2019, which came before the Committee on the Rights of the Child, demonstrates the rights-based approach taken by the current Government.

23. In July 2019, the Chief Public Defender's Office submitted a communication on behalf of a migrant woman and her children in order to report violations of various rights recognized in the Convention on the Rights of the Child. The children were facing a certain and immediate risk of family break-up as a result of the possible deportation of their mother and the prohibition of her re-entry into Argentina.

24. In view of this situation, and given that the order had been finalized and could be enforced, the Office requested the adoption of interim measures to suspend the deportation order and the prohibition of re-entry on the grounds that execution of the order would result in violations of the human rights of the woman's daughters and newborn son, who was in an extremely vulnerable situation because he was still being breastfed.

25. In January 2020, the new authorities became aware of the international proceedings and undertook to comply with the interim measure requested by the Committee on the Rights of the Child (i.e., they undertook not to return the mother to her country of origin while the case was under consideration) and to address the substantive issue in the case.

26. Accordingly, in March 2020, the National Migration Directorate suspended the deportation order and the prohibition of re-entry and subsequently granted permanent residence to the author of the communication, taking into consideration the principles of unity, support and the right to family reunification.

⁹ Article 29 in fine of Act No. 25.871 provides that: "Exceptionally, and only on grounds of humanitarian considerations, family reunification or cooperation with the justice system under the conditions set out in the last paragraph of this article, the National Migration Directorate may admit into the country, as permanent or temporary residents, foreign nationals covered by subparagraphs (a), (k) and (m) and those covered by subparagraph (c) in cases where the offence carries a maximum term of 3 years' imprisonment in national law, or is a negligent offence. The exceptional exemption procedure may not be applied except in those cases that are expressly regulated."

27. This action eliminated the risks associated with the deportation order and prevented the children's rights from being violated.

28. The above clearly shows that the Argentine State not only acted in strict compliance with the interim measure requested by the Committee on the Rights of the Child but also addressed the substantive issue at stake by definitively regularizing the mother's immigration status and guaranteeing her and her children's right to family unification.

29. It should be noted that the National Migration Directorate's swift action was taken during the COVID-19 pandemic, that is, in the particular circumstances outlined above.

30. The State's actions in the case have gone even further, as the agencies involved have set up a working group to coordinate strategies related to guarantees of non-repetition, as explained below.

31. On 31 August 2020, the Committee on the Rights of the Child issued a statement on the case in which it welcomed the Government's decision not to deport this mother of three young children, who had previously served a sentence for a drug trafficking offence, and commended the Argentine State for taking the best interests of the child as a primary consideration in reassessing the deportation order.¹⁰

B. Follow-up information relating to paragraph 31 of the concluding observations

32. With regard to the enforcement of deportation orders, in addition to what has already been stated, it should be noted that the current management of the National Migration Directorate analyses the details of all cases in which there are grounds for rejecting a person's application for residency or revoking his or her residency permit.

33. In order to ensure a fair and orderly procedure, the principles highlighted by the Committee are taken into account, as the Directorate assesses the make-up of the migrant's family, recognizes his or her roots in and ties with Argentina, and applies a proportionality test in administrative sanction proceedings and in appeals for judicial review.

34. If, at the administrative stage, it is confirmed that a person has entered the country in an irregular manner but has Argentine children of minor age in Argentina, the Directorate urges him or her to regularize his or her immigration status in order to avoid deportation.

35. When a person who has entered the country in an irregular manner does not have Argentine children of minor age and his or her case has come before the courts, the case is evaluated in accordance with the guidelines in the judgment and, if possible, the situation is remedied.

36. This course of action differs substantially from that followed by the Directorate under the previous authorities, who insisted on deporting migrants even when a judicial conviction had been handed down.

37. In order to protect migrants' family unity and ensure that the best interests of the child are taken into account, a working group has been established in the wake of the aforementioned case brought before the Committee on the Rights of the Child. The group is made up of representatives of the National Migration Directorate, the National Secretariat for Human Rights and the Chief Public Defender's Office and is expected to incorporate other government agencies and civil society organizations.

38. The group has begun to address situations that compromise the fundamental rights of children and adolescents in the context of migration, giving express consideration to each of the points raised by the Committee in this paragraph of its concluding observations and to the contents of joint general comment No. 3 (2017) of the Committee and No. 22 (2017) of the Committee on the Rights of the Child and joint general comment No. 4 (2017) of the Committee and No. 23 (2017) of the Committee on the Rights of the Child.

¹⁰ See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26196&LangID=E>.

39. In this connection, the National Migration Directorate is conducting a detailed analysis of individual cases of migrants with young children with a view to suspending, *ex officio*, administrative acts in progress and regularizing the immigration status of the persons concerned, given that the rights of children and adolescents are involved.

40. This evaluation covers cases of administrative irregularity under judicial review, cases involving expired criminal records and cases that have been reported to international organizations.

41. The agencies that make up the working group are analysing possible strategies with a view to producing a guide to administrative proceedings in order to standardize good practices and enhance the predictability of migration procedures, thereby safeguarding the rights of children and adolescents.

42. The issues considered in this analysis include the conduct of a study prior to the adoption of a deportation order in cases of administrative irregularity, implementation of a suitable mechanism for serving deportation orders, and measures to ensure respect for the right to qualified defence counsel and the right to family unity.

43. Lastly, it should be noted that the Senate appointed the Ombudsman for Children and Adolescents, which position had been vacant for 14 years, and her deputies on 28 February 2002. The Ombudsman is the highest monitoring authority within the system for the comprehensive protection of children's rights.

C. Follow-up information relating to paragraph 33 of the concluding observations

44. With regard to the regularization of migrant workers in Argentina, it should be noted that all nationals of Southern Common Market (MERCOSUR) States parties and associated States have access to temporary residence for two years under article 23 of Act No. 25.871. Once this period has expired, they are entitled to change their status and obtain permanent residence in the country.

45. The situation is different for nationals of other countries, who must fall into one of the subcategories provided for in national regulations in order to obtain legal residence in the country.

46. As Senegalese nationals make up one of the most visible groups of migrants, the new authorities of the National Migration Directorate are developing special regimes for regularizing the immigration status of this group and persons of other nationalities. The implementation of these regimes, which include substantial facilities and benefits, will depend on how the health situation develops in Argentina.

47. In addition, the new authorities of the National Migration Directorate have set up a unit for the early detection of human trafficking and migrant smuggling and a unit for the implementation of migration policies with a gender perspective.

48. The launch of the Ministry for Women, Gender and Diversity in December 2019 represents an institutional advancement in this connection.¹¹ The establishment of this Ministry reflects the commitments made by the State with respect to women's rights and diversity and shows that gender issues are being treated as a priority in the public agenda.

49. The mandate of this new Ministry is to adopt measures aimed at dismantling the structural inequality that affects women and lesbian, gay, bisexual, transgender, intersex and other persons and ensuring that these groups can effectively exercise their rights.

50. In order to undertake these actions, the Ministry has a secretariat for equality and diversity policies and a secretariat for policies to combat gender-based violence, among other relevant units. The latter secretariat includes a coordinating office for addressing gender-

¹¹ The Ministry for Women, Gender and Diversity was established in December 2019 pursuant to Decree No. 7/2019. The full text of the decree is available at <https://www.boletinoficial.gob.ar/detailNotice/primer/223623/20191211>.

based violence against migrants, which is responsible for consolidating a national policy for the provision of comprehensive assistance to migrant victims of gender-based violence.¹² This office also seeks to prevent gender-based violence and to protect migrant women and migrant lesbian, gay, bisexual, transgender, intersex and other persons against such violence.

51. The executive branch presented the National Action Plan for Combating Gender-based Violence (2020–2022),¹³ which was drafted by the Ministry for Women, Gender and Diversity under Act No. 26.485 on comprehensive protection to prevent, punish and eradicate acts of violence against women in their interpersonal relations.

52. The Plan is the result of a broad participatory process involving all regions of the country, government agencies and civil society organizations. It is based on the premise that gender-based violence constitutes a serious violation of human rights and that it is incumbent on the State to take the necessary measures to promote and protect these rights.

53. Within the framework of the Plan, policies for comprehensively addressing gender-based violence against migrants are grouped into several key areas: prevention, assistance, protection and access to justice.

54. The prevention component involves designing and implementing actions to transform patterns, factors and cultural conditioning that give rise to discrimination against migrants and leave them unprotected against violence. The Ministry for Women, Gender and Diversity is working on a national prevention campaign to promote cultural and social change.

55. The free 144 hotline, which provides guidance and advice to victims of gender-based violence, has been adapted as part of efforts to provide comprehensive assistance to migrant women. In this regard, the operators have been trained to deal with migrant victims and an intervention protocol has been drawn up for receiving complaints from persons belonging to this group.

56. The “Support” (*Acompañar*)¹⁴ programme has also been set up to provide financial support, comprehensive assistance and access to psychosocial support mechanisms for women and lesbian, gay, bisexual, transgender, intersex and other persons who are at risk of gender-based violence. The sole requirement applicable to migrants who wish to participate in the programme is that they must have lived in the country for at least one year, which means that the access requirements are less stringent than those established for other social programmes.

57. In order to facilitate access to justice for migrants, indigenous persons and persons in rural areas, the National Action Plan for Combating Gender-based Violence (2020–2022) provides for the development of mechanisms for bridging linguistic and cultural differences, including the use of interpreters to assist non-Spanish speakers and speakers of indigenous languages.

¹² One of the objectives of this agency is to identify specific practices of gender-based violence against migrants in the different regions of the country in order to optimize the planning and implementation of public policy on this issue. The agency also helps to plan public policy with a view to enhancing access to justice for this group. These objectives are set out in Administrative Decision No. 279/2020 (annex IV), available at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/330000-334999/334965/dea279-4.pdf>.

¹³ For more information on the National Action Plan for Combatting Gender-Based Violence (2020–2022), see: https://www.argentina.gob.ar/generos/plan_nacional_de_accion_contra_las_violencias_por_motivos_de_genero.

¹⁴ This programme was established pursuant to Decree No. 734/2020, available at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/340000-344999/341971/norma.htm>.

58. On 30 August 2020, in order to raise the visibility and promote the inclusion of persons of African descent in Argentina, the National Secretariat for Human Rights convened the first interministerial round table to develop public policies for persons belonging to this community. A number of different proposals were put forward, including the development of a short-term action plan and of plans for the second half of the International Decade for People of African Descent (2015–2024). The round table includes representatives of the Ministry of Justice, the Ministry of Labour, the Ministry of Social Development, the Ministry of Production, the Ministry of Foreign Affairs, the Ministry of Education, and the Ministry for Women, Gender and Diversity.
