



# 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

### List of issues prior to submission of the second periodic report of Argentina\*

#### Section I

##### A. General information

1. In the light of the promulgation of Emergency Decree No. 70/2017, which substantially alters Migration Act No. 25871 (2004) and Citizenship Act No. 346, please provide information on the actions taken to ensure that the national policy framework remains aligned with the Convention, given that the provisions of the above-mentioned Decree are clearly at odds with the State party's commitments under the Convention regarding the rights and treatment of and services provided for migrant workers and members of their families. In addition, please state the views expressed by the Ombudsman's Office and by non-governmental organizations on this matter.

2. In view of the fact that the State party is a federal republic, please describe the measures taken to implement the laws of all its provinces, especially border provinces and municipalities, in accordance with the Convention, and the mechanisms for institutional coordination that have been established in order to safeguard the rights enshrined in the Convention for all migrant workers and members of their families. Please include information on both provincial and municipal policies and practices in the areas of migration, labour, child protection, combating trafficking in persons, access to justice and any other policies and practices that may have an impact on the rights of migrant workers and members of their families. Please include details on the corresponding budget allocations and on the coordination, monitoring and evaluation procedures in place in this connection.

3. In the light of the National Human Rights Plan for 2017–2020, please indicate what steps have been taken to give the Ombudsman greater powers for the investigation of human rights violations. Please also describe the work and scope of the administrative duties of the Office of the Prison System Ombudsman in detention centres for migrants. Please provide information on the role played by the National Directorate for Pluralism and Interculturalism in upholding and promoting the rights of the migrant community and in furthering the recognition and visibility of that community.

4. Please report on the specific measures adopted in order to give effect to each of the recommendations made by the Committee in 2011 and on how those measures have improved the policy framework and the effectiveness of policy implementation and affected the rights of migrants. The Committee would also like to see official figures on the results

\* Adopted by the Committee at its twenty-eighth session (9–20 April 2018).



of those efforts and/or any studies conducted to measure the changes and progress achieved with respect to the recommendations made to the State party.

5. Please indicate what steps have been taken to compile disaggregated data on migrants systematically through the establishment of a national information system on migration, as recommended by the Committee in its previous concluding observations (CMW/C/ARG/CO/1, para. 14). Please provide information on improvements in the collection, processing and analysis of information. Please indicate whether arrangements have been made for the provision of access to such data to human rights institutions and for the presentation of regularly compiled statistics for use in assessing advances or setbacks with regard to public policies on migration issues with the participation of public agencies, civil society, non-governmental organizations and institutions within the justice system.

6. Please provide information on any programmes to ensure that public officials, including members of the judiciary, police officers and customs officials, are adequately trained and informed on legislation relating to internal and international migration.

## **B. Information relating to the articles of the Convention**

### **1. Part II of the Convention**

#### **Article 7**

7. Please explain how the State party ensures the enjoyment, without distinction of any kind, of the rights protected by the Convention and indicate whether the State party's laws cover all the prohibited grounds for discrimination enumerated in the Convention and in other international treaties. Please provide information on the steps taken pursuant to article 7 of the Convention with a view to ensuring that Emergency Decree No. 70/2017 is not implemented in such a way as to criminalize migrants, discouraging xenophobia and remediating political and media messages that link migration with a lack of security or safety, as recommended by the Committee (CMW/C/ARG/CO/1, para. 18).

8. Please indicate whether the State party has taken steps to ratify the International Labour Organization (ILO) Migration for Employment Convention (Revised), 1949 (No. 97) and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), as recommended by the Committee (CMW/C/ARG/CO/1, para. 12).

### **2. Part III of the Convention**

#### **Articles 8 to 22**

9. Please provide information on the laws and regulations that protect migrant workers from labour exploitation, forced labour and sexual abuse (CMW/C/ARG/CO/1, para. 21). Please describe the labour inspection programmes that are in place, the agency responsible for their implementation and the mechanisms that have been established to process complaints in this regard without irregular migration status being an obstacle or barrier that discourages migrants from filing complaints or claims. Please provide official statistics on these matters, including information on the number of complaints received compared to the number of cases resolved.

10. Please describe the specific measures that are in place to protect Argentine and other women migrants in transit from any type of crime and, in particular, from various forms of violence and sexual abuse, and to provide reparation for those who become victims of crime. Please provide quantitative and qualitative data on the results of those measures and on the challenges faced and achievements registered in that regard, taking into account the guidelines set out in general recommendation No. 26 (2008) on women migrant workers of the Committee on the Elimination of Discrimination against Women.

11. Taking into account the significant amendments made to Migration Act No. 25871 under Emergency Decree No. 70/2017, and in accordance with the human rights-based approach set forth in the Convention and the Committee's previous concluding observations (CMW/C/ARG/CO/1, paras. 23–28), please consider the following:

(a) The period of validity of 70 or 80 days has been shortened to 60 consecutive days and a provision on temporary residence permits has been added, which, in the Committee's view, reduces the time available for effective and appropriate regularization of the status of migrants;

(b) As regards the stipulation that migrants may be prevented from entering or staying in the State party on the basis of their criminal record, previous convictions or judicial and security orders handed down against them for offences that carry a penalty of at least 3 years' imprisonment, Emergency Decree No. 70/2017 does not refer to a minimum in order to safeguard the right to due process and the right to an adequate defence. Please describe the mechanisms used to guarantee the right of defence and the right to due administrative and judicial process, before and after the entry into force of Emergency Decree No. 70/2017. The Committee would also like to receive statistics on this subject;

(c) Migrants must notify the National Migration Directorate of their address within just two working days. Please indicate whether exceptions might be made in case of unforeseen events. Please also indicate how many applications for free legal aid were received by the National Migration Directorate in 2017;

(d) The exemption in articles 22 and 29 in the event of cancellation of residency and subsequent to deportation falls solely within the sphere of migration law, that is, administrative law, and is therefore not subject to judicial review; this constitutes a restriction of the right to due process;

(e) Please furnish information on the steps that have been taken to safeguard the right of defence and the right to due process for persons subject to deportation proceedings. In particular, please indicate whether there is a record of the number of instances in which article 86 of Migration Act No. 25871 has been applied since the entry into force of Emergency Decree No. 70/2017;

(f) Please provide information on the protective measures that have been taken to ensure that Emergency Decree No. 70/2017 is in line with the Convention and to avoid an increase in the use of arbitrary detention, pretrial detention without a corresponding judicial order and the deprivation of liberty of migrants for indefinite periods of time, even in cases where no expulsion or deportation order has been issued, in order to honour the commitments assumed under article 16 of the Convention;

(g) Please indicate whether racial or ethnic profiling is used in the implementation of Emergency Decree No. 70/2017 and explain how the rights of children are protected and how the inclusion of a gender perspective is ensured in the course of the corresponding procedures.

12. Please indicate how many humanitarian visas have been granted since the entry into force of Emergency Decree No. 70/2017. In particular, please indicate how many permits have been issued to unaccompanied minors, who should be given humanitarian visas when it is necessary in view of the best interests of the child. In addition, please indicate whether steps have been taken to ensure that the staff of the National Migration Directorate and other agencies systematically inform all migrants, in particular unaccompanied minors (who require a guardian), that they have the right to apply for a humanitarian visa.

13. Please provide information on reported cases of persecution by police officers or harassment by immigration officials of informal migrant workers, migrant families living in poverty or groups of lesbian, gay, bisexual, transgender or intersex persons when reviewing their immigration documents or work permits or in the course of other procedures in which those officials justify their actions with reference to Emergency Decree No. 70/2017. Please provide detailed information on the action taken to investigate complaints of harassment, corruption or abuse of authority. Please include information on the number of complaints that have been received and investigated in the last seven years and on the steps taken to investigate, prosecute and convict the officers responsible; please specify the nature of the charges brought and the sentences imposed. In this connection, it would be useful to know the number of complaints lodged with the judicial authorities relating to cases involving informal street vendors.

14. Please indicate what alternative measures have been established and introduced in order to ensure that, when necessary, children and families are housed in open centres as a means of protecting their rights. Please provide statistics on all alternative measures applied since 2011. Please provide information on the child welfare agencies that oversee these facilities and procedures and on the budgetary and other resources provided for them at the federal, provincial and municipal levels. Please indicate whether the objective of protecting children's rights is considered to take priority over the objectives of the immigration control policy. Please indicate what steps have been taken to guarantee the right of all unaccompanied children to a guardian, their right to legal assistance, their right to be heard and their rights to other due process guarantees, including access to justice, in the course of procedures designed to determine what action would be in a child's best interests or during immigration or other procedures that could affect a child's rights.

15. Please indicate whether the State party has developed alternative non-custodial measures as a means of validating and enhancing mechanisms for the identification, referral and reception of detained migrants and asylum seekers. In this connection, please provide information on the new temporary holding facilities that are being set up.

16. In the light of article 16 of the Convention and the Committee's general comment No. 3 (2017) on the general principles regarding the human rights of children in the context of international migration:

(a) Please provide information on the detention of adult and child migrants and the mechanisms in place to ensure that detention is used only as a last resort and that adult migrants are detained only as an exceptional measure;

(b) Please explain what factors would warrant the use of detention as an exceptional measure and indicate which administrative or judicial authority is competent to order it, what safeguards are in place to ensure that any such decision is duly founded and how the right to an effective judicial remedy is ensured;

(c) Please indicate whether specific protocols or procedures are in place to ensure that persons in special situations of vulnerability (such as asylum seekers, pregnant or nursing women, victims of human trafficking or domestic violence, lesbian, gay, bisexual, transsexual and intersex persons, children and adolescents) are identified, are not placed in detention and receive proper care;

(d) Please provide qualitative and quantitative information on the alternative non-custodial measures that are used, disaggregated by month or year of application, gender and nationality of the person involved and type of measure;

(e) Please describe the measures and protocols that are in place to ensure access to places of detention for organizations that promote and defend the rights of migrants and asylum seekers and for civil society in general.

17. Please state how many persons have been subject to the expedited summary deportation proceedings provided for by Emergency Decree No. 70/2017 and indicate the rate at which the number of deportations has increased as a result of the application of that decree. Please provide information on the involvement of human rights bodies as observers and whistle-blowers that report human rights violations when migrants are held in detention while undergoing administrative or judicial processing and/or in the course of their deportation from the State party (Convention, art. 22).

18. Please indicate whether there is any follow-up and support provided to families whose members have been separated as a consequence of deportation proceedings and what arrangements have been made for the protection of minors when one or both parents have been deported. Please indicate what elements are taken into consideration and what analyses are undertaken in the case of members of families that have been separated as a result of domestic violence when those persons are unable to demonstrate their link to the aggressor or prove that they lived with the aggressor because, in order to demonstrate that link and thus avert deportation or regularize their migration status, they would be putting their lives at risk.

**Article 23**

19. Please provide a detailed description of the policies and measures adopted to guarantee consular protection for migrant workers and members of their families abroad, including those in an irregular situation, in particular with regard to:

(a) The provision of free legal assistance in cases involving detention or deportation;

(b) Family reunification procedures whereby children or, as applicable, parents can be reunited with their family;

(c) Measures to prevent parents and children from being separated as a result of a deportation order issued by the country of destination;

(d) Measures to prevent unaccompanied children or children accompanied by their mothers from being detained in the country of destination on the basis of their migration status.

**Articles 25 to 30**

20. Please provide information on the steps taken to ensure the enjoyment, in practice, of the right to equal treatment for migrant workers and members of their families, in particular women migrant workers, especially in the farming, manufacturing, domestic service and craft sectors, and to monitor their working conditions effectively. Please also indicate what mechanisms have been established to provide labour and legal protection for migrant workers in order to ensure that they enjoy treatment that is no less favourable than that accorded to nationals with regard to remuneration and working conditions. Please include information on the steps taken to promote the rights of migrant workers abroad, including migrant sex workers.

21. Please provide information on the national policies that are in place to ensure that migrants have the same access to health services and emergency care as Argentine nationals. In the light of the Committee's general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families and general comment No. 14 (2000) on the right to the highest attainable standard of health, of the Committee on Economic, Social and Cultural Rights, please provide information on the steps taken to clarify and resolve cases reported in the media and by civil society organizations involving exclusionary practices on the part of health-care personnel that are detrimental to migrant workers and their families. In addition, please report on the bill introduced in Jujuy Province that would provide for the establishment of a provincial health insurance system for foreigners and indicate whether there are plans to expand the scope of that system to include the rest of the country's provinces.

22. Please describe the policies and programmes that have facilitated the entry of students from migrant families into the education system. Please provide information on the progress made in streamlining requirements and expediting procedures for the admission of minors to schools and on the agreements that have been reached to facilitate both continued study and the practice of a profession. Please also indicate whether advanced vocational and technical studies are recognized and credited in a prompt and timely manner as a means of promoting the employment and social integration of migrants, including repatriated Argentine migrants.

23. Please provide detailed information on the situation of migrant women who are employed as domestic workers and indicate what steps have been taken to implement Act No. 26844, which establishes a system of special employment contracts for persons employed in private homes. Please indicate whether that law provides for greater oversight of their working conditions and for the investigation and punishment of persons who abuse them and ensures that such workers are informed about the procedure for lodging complaints against their employers and about any measures intended to facilitate the regularization of their migration status.

24. In the light of the Committee's previous recommendations (CMW/C/ARG/CO/1, para. 30), please describe what progress has been made in modifying the length of

residence required to qualify for non-contributory social benefits with a view to ensuring that this requirement is in keeping with articles 5 and 6 of the Migration Act and the Constitution. Please provide information that demonstrates that migrant workers and members of their families have effective access to the social security system and all social security benefits, without differentiation or discrimination with respect to Argentine nationals. Please also explain what steps have been taken to overcome the barriers that block access to social assistance and protection programmes for migrants, even those who are in situations of extreme vulnerability, because they do not meet the relevant administrative requirements.

### **Article 33**

25. Please describe the distribution channels and institutions responsible for disseminating information among the migrant community about migrants' rights under the Convention and, in particular, the rights established in the Constitution and Argentine law for their protection. In view of the fact that the new expedited summary procedure provided for by Emergency Decree No. 70/2017 does not allow migrants sufficient time to take proper action or sufficient response time and restricts the provision of legal aid, please explain how migrants can be informed in a timely manner of their rights and options when it comes to defending their case and appealing against a migration decision.

## **3. Part IV of the Convention**

### **Article 44**

26. Please clarify whether Emergency Decree No. 70/2017 prohibits family reunification in cases involving the commission of criminal offences that may lead to deportation (arts. 29 and 62). Please also provide information on programmes and policies intended to facilitate family reunification for Argentine migrant workers and their family members living abroad. Please indicate what procedures and measures are in place to protect the right to family life of migrant workers in the State party and members of their families, including the right of unaccompanied children to have their parents join them in the State party or to join their parents if the parents are residing in the country of origin or a third country, in keeping with the particular circumstances of each case and the principle of the best interests of the child. Please also indicate whether there is an arrangement in place whereby parents and their children can visit each other regularly in a safe manner, whether in the country of origin or destination.

27. Please provide information on the cases of migrants in the State party who have sought to have a deportation order suspended so that they could avail themselves of their rights to family reunification because they have been adversely affected by the implementation of Emergency Decree No. 70/2017. Please also report on cases in which migrants have sought to avert deportation by demonstrating that they have put down roots in the country or are in need of humanitarian aid but in which an administrative order has nonetheless been issued, without due process, that forces them to leave the State party, the provisions of article 56 of the Convention notwithstanding.

## **4. Part VI of the Convention**

### **Article 64**

28. Please provide information on the steps taken, such as consultation and cooperation with other States, to promote satisfactory, equitable and humane conditions in connection with the international migration of migrant workers and their families, through bilateral and multilateral agreements, including policies and programmes, especially with the Plurinational State of Bolivia, Peru, Paraguay and the other member countries of the Southern Common Market (MERCOSUR). Please include information on how these measures have been incorporated into migration policies and programmes in general and on whether their implementation has reduced the number of violations of the rights of migrant workers and members of their families. In particular, please include information on cooperation with the authorities of other States to protect migrants who are victims of

offences and to punish those responsible. Please describe how these agreements protect rights and procedural guarantees in the event of detention, repatriation and deportation and how they facilitate and safeguard the right to family reunification, in countries of origin, transit and destination; how they address cases of human rights violations and disappearance of migrants in transit and the search for and identification of migrant victims of these and other offences; and how victims and their families are ensured effective access to justice and reparation in the country in which they find themselves.

#### **Article 67**

29. Please provide information on cooperation programmes that are in place between the State party and relevant States of employment for the voluntary return to the State party of migrant workers and members of their families when they decide to return or when they are in the State of employment in an irregular situation. Please include relevant data and statistics. Please provide information on the measures taken at the national, provincial and municipal levels to facilitate the return of Argentine migrant workers and members of their families and to assist them in their resettlement and reintegration into the economic and social life of the State party.

30. Please describe the specific measures in place to protect women migrants who are in or transiting through the State party from all types of crime, particularly all forms of violence and sexual abuse, and to provide victims with reparation. Please provide quantitative and qualitative data on the results obtained, challenges faced and successes achieved through those measures, taking into account the guidelines set out by the Committee on the Elimination of Discrimination against Women in its general recommendation No. 26 (2008) on women migrant workers.

31. Please provide information on the measures taken by the State party to ensure the rights of migrant children and their protection from any kind of violence or exploitation, particularly those who are unaccompanied or in an irregular situation, in or transiting through the State party, including the allocation of sufficient resources for the effective enforcement of labour laws and the protection of children from economic exploitation. Please provide information on the steps taken to protect children from hazardous work, including through the implementation of the ILO Worst Forms of Child Labour Convention, 1999 (No. 182) and the strengthening of the labour inspection system.

#### **Article 68**

32. In the context of Act No. 26842 of 2012 on the prevention and punishment of trafficking in persons and assistance to victims, please provide disaggregated data on the number of cases of human trafficking recorded in the past seven years and state whether the Act has had a positive impact as regards persons over 18 years old who purportedly “accepted” the conditions laid down by traffickers. Please provide information on the mandate and powers of the Federal Council to Combat Human Trafficking and Exploitation and Protect and Assist the Victims Thereof, which was established in 2016, and explain how it exercises its functions, including the investigation and prosecution of human traffickers. Please also provide detailed information on the 2012 National Programme for the Rescue and Assistance of Victims of Trafficking and on the establishment of shelters for girls, adolescents, young persons, women and men who are victims of trafficking.

#### **Article 69**

33. Please describe the progress made with respect to the Committee’s previous recommendation to grant visas, work permits or residence permits to self-employed migrant workers, so as to place them on an equal footing with other migrant workers (CMW/C/ARG/CO/1, para. 34), in line with article 2 (h) of the Convention and article 23 of Decree No. 616/2010, in order to enable self-employed migrants from non-MERCOSUR countries to gain access to regularization procedures. Please also provide information on positive experiences and models of support for the regularization of Argentine migrant workers and members of their families abroad.

34. Please provide information on the programmes for migration status regularization that have been implemented since 2011. Please give details of the procedure, time frame and costs associated with the regularization process for migrant workers, particularly under the Agreement on Residency for Nationals of MERCOSUR Member States and in the framework of the Convention, bearing in mind that this process serves as a preventive measure in the face of the restrictions and setbacks arising from Emergency Decree No. 70/2017, which mainly affect persons in situations of poverty or informal employment. Please provide statistics disaggregated by nationality, age and gender, as well as details of specific cases.

35. Please indicate what measures have been implemented to ensure regular, safe, accessible and affordable channels for migration through the progressive expansion of visa liberalization and easily accessible visa facilitation regimes and/or schemes, such as refugee resettlement programmes, complementary protection, temporary protection, humanitarian visas, visitor, family reunification, work, resident, retirement and student visas, and private sponsorship programmes.

### **Article 83**

36. Please provide information on the procedures established to ensure that migrants and members of their families who are victims of discriminatory treatment, unjustified detention, deportation without statement of reasons and other human rights violations, as a result of the implementation of Emergency Decree No. 70/2017, can seek and obtain compensation, redress and full reparation.

37. Please explain what measures of prevention, investigation, reparation and non-repetition have been introduced by the State party to ensure that cases of discrimination against and harassment of migrant workers and members of their families, especially migrants of Senegalese, Dominican, Peruvian, Bolivian, Haitian and Venezuelan origin, are resolved through judicial mechanisms.

## **Section II**

38. In this section, the Committee invites the State party to provide concise information (three pages maximum) regarding the protection of migrant workers and members of their families with respect to:

- (a) Bills or laws, and their corresponding regulations;
- (b) Institutions (and their mandates) or institutional reforms;
- (c) Policies, programmes and action plans covering migration, and their scope and financing;
- (d) Recent ratifications of human rights instruments, including the ILO Migration for Employment Convention (Revised), 1949 (No. 97), the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and the ILO Domestic Workers Convention, 2011 (No. 189);
- (e) Recent comprehensive studies on the situation of migrant workers and members of their families.

## **Section III**

### **Data, official estimates, statistics and other information, if available**

39. Please provide, if available, updated disaggregated statistical data and qualitative information for the past three years on:

- (a) The volume and nature of migratory flows to and from the State party since the Convention entered into force in the State party;



(b) Migrant workers detained in the State party and Argentine migrant workers detained in countries of transit or employment, including those being held because of their migration status;

(c) Migrant workers and members of their families who have been expelled from the State party;

(d) The number of unaccompanied migrant children and migrant children separated from their parents in the State party;

(e) Remittances received from nationals of the State party working abroad;

(f) Reported cases of trafficking in migrants and investigations, prosecutions and convictions of perpetrators in such cases (including data disaggregated by sex, age, nationality and purpose of trafficking);

(g) Legal assistance services provided to migrant workers and members of their families in the State party and to nationals working abroad or in transit through third States.

40. Please provide additional information on any important developments that have taken place and on measures to implement the Convention that the State party considers a priority; please also indicate whether the State party intends to make the declarations provided for in articles 76 and 77 of the Convention, thus recognizing the competence of the Committee to receive communications from States parties and individuals, as recommended by the Committee (CMW/C/ARG/CO/1, para. 10).

41. Please submit an updated core document in line with the harmonized guidelines on reporting (HRI/GEN/2/Rev.6). In accordance with General Assembly resolution 68/268, paragraph 16, the common core document should not exceed 42,400 words.

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