



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

Distr.: General
10 September 2019
Original: English

Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families Thirty-first session

Summary record of the 432nd meeting

Held at the Palais des Nations, Geneva, on Tuesday, 3 September 2019, at 10 a.m.

Chair: Mr. Tall

Contents

Consideration of reports submitted by States parties under article 73 of the Convention
(*continued*)

Second periodic report of Argentina (continued)

This record is subject to correction. Corrections should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of the present record to the Documents Management Section (DMS-DCM@un.org).

Any corrected records of the public meetings of the Committee at this session will be reissued for technical reasons after the end of the session.

GE.19-15099 (E) 090919 100919



* 1 9 1 5 0 9 9 *

Please recycle A recycling symbol consisting of three chasing arrows forming a triangle.



The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 73 of the Convention *(continued)*

Second periodic report of Argentina (continued) (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. Alza** (Argentina) said that there was no discrimination against migrants of different nationalities, and no selection criteria were applied to migrant populations seeking residence in the country. The vast majority of migrants came from the neighbouring countries and four of every thousand were of African descent. The principle of freedom for all had been upheld since the General Constitutional Assembly of 1813. Migrants had the same opportunities as Argentines and there was no discrimination against them based on their level of education. An agreement had been signed between the National Migration Directorate and the National Registry of Rural Workers and Employers, and a specific registry had been established to ensure that the situation of agricultural migrant workers was regulated and that migrants were not exploited.

3. Since 2016, some 800,000 migrants had obtained residence permits in Argentina. The National Migration Directorate aimed to regulate the situation of migrants in the country to ensure their protection and integration into society. To streamline the process of granting residence permits, it had launched the online application service, RADEX, in 2018. The one-stop service also enabled migrants to provide their criminal record and they only had to present themselves in person at a local office to provide their biometric data and collect their final residence permit. The children of migrants who applied for a residence permit through RADEX were automatically included in their parents' application. The fee for temporary residence applications was among the lowest in the region. Migrants who had applied for a residence permit were also invited to provide information on their level of training, employment history and other matters in a voluntary survey. Within the framework of the Quito Process, that information was entered into a human capital database with a view to matching labour market supply with demand in the provinces, thus enabling migrants to contribute to the cultural and economic development of the country.

4. **Mr. García** (Argentina) said that it was important to enable migrants to use their skills to contribute to the development of the country. Around 80 per cent of migrants with residence permits were concentrated in Buenos Aires, which limited their work opportunities. Past migration policies had channelled migrants to the provinces, matching their skills with labour demands. There was a particular need for doctors, engineers and horticultural workers in the provinces, which could be met on the basis of information on migrants' qualifications provided through RADEX. It was essential to return to the types of immigration policies under which the *Hotel de Inmigrantes* had been built next to the disembarkation port in the previous century. Newly arrived migrants had there been provided with accommodation, health care, food and, where affordable, cars to reach their destinations in the provinces. The National Migration Directorate had established procedures to orient migrant communities to places where they could participate in the country's development. The Syrian-Lebanese community, for example, had been guided from the port of Buenos Aires to the province of Rioja, some 1,100 kilometres away. Argentina was a country of immigrants, as demonstrated by the fact that four of the previous six presidents were children of migrants.

5. **Ms. Quinteros** (Argentina) said that some 1.1 million Argentines had migrated to countries around the world, particularly countries in South America, Spain, Italy, the United States of America and Israel. The Government had consular representation worldwide, especially in cities with a large Argentine population in Spain, Italy and the United States of America. Argentine consuls performed functions pursuant to the Vienna Convention on Consular Relations of 1963 and the Consular Regulations in force, including visiting Argentine nationals in detention and holding centres, assisting Argentines pending return or deportation back to Argentina and providing assistance to children whose parents

were being returned or deported. Consuls ensured that all Argentine nationals who were detained or facing return were informed of their right to counsel. Through the Network of Argentine Researchers and Scientists Abroad (the RAICES programme), Argentine researchers and scientists were offered incentives, such as grants, to encourage their voluntary repatriation to the country.

6. The treatment of refugees and asylum seekers was governed by Act No. 26.165 on the recognition and protection of refugees, and was in line with the 1951 Convention relating to the Status of Refugees, the 1967 Protocol relating to the Status of Refugees and the 1984 Cartagena Declaration on Refugees. Act No. 26.165 regulated the situation of stateless children and all children born in the country were granted Argentine nationality. The Act also provided for the establishment of the National Commission for Refugees, composed of representatives with voting rights from the National Secretariat for Human Rights, the National Human Rights Directorate, the Ministry of Social Development and the National Institute to Combat Discrimination, Xenophobia and Racism. The Office of the United Nations High Commissioner for Refugees was also represented on the Commission, with speaking but not voting rights. There were around 3,500 refugees and 6,000 asylum seekers in Argentina. Asylum seekers were offered accommodation pending the outcome of their applications, to help them to integrate and find work. There were no reception centres for applicants, who were free to travel anywhere in the country.

7. There had been no Ombudsman's Office since 2008 owing primarily to a lack of consensus over the nomination of the Ombudsman. That situation was expected to be remedied shortly. The Chief Public Defender worked closely with the National Migration Directorate and the Ministry of Justice, and was empowered, inter alia, to initiate investigations into human rights violations based on complaints submitted by the public administration, or public or private enterprises, carry out inspections, compile reports and take measures to gather further evidence. The Office of the Ombudsman for the Prison System was responsible for protecting the rights of persons deprived of their liberty in Argentina. Its functions included carrying out prison audits and visits to all places of deprivation of liberty, including centres for minors and detention centres for migrants awaiting expulsion.

8. The National Secretariat for Human Rights, in cooperation with the National Migration Directorate and the National Institute to Combat Discrimination, Xenophobia and Racism, had organized meetings with community leaders in 2017 in Santa Fe and in 2018 in Mar del Plata to enable those leaders to share their concerns and experience. Activities to draw attention to the rights of the Afrodescendent community included the celebration of the International Afro-Latin American, Afro-Caribbean and Diaspora Women's Day. The Afrodescendent population was also included in national censuses, and efforts had been made to improve the 2020 census in that regard. The Government had participated in the Inter-American Meeting of High-Level Authorities for the Afrodescendent Population in 2018 in Lima. A round table had also been organized by the National Secretariat for Human Rights to foster dialogue among State bodies and civil society on migration, pluralism and interculturalism.

9. Health care was free and accessible to all in Argentina, including migrants, refugees and asylum seekers in a regular or irregular situation. Equally, public education was free for all. Agreements had been signed with certain countries to ensure the revalidation of migrants' qualifications, particularly for Venezuelans, to enable them to enter employment as quickly as possible. An online education programme was extensively used by Argentine children living abroad, which facilitated their reintegration into the education system upon their return.

10. **Mr. Alza** (Argentina) said that training was provided by the National Migration Directorate to help migrants overcome the technology gap and use the RADEX system. In addition, training courses had been carried out for consuls, migrant organizations and representatives of the National Migration Directorate across the country to enable them to assist migrants in applying for a residence permit through RADEX. In cooperation with the International Organization for Migration and the Office of the United Nations High Commissioner for Refugees, migrant and refugee centres had been opened in Buenos Aires,

Rosario and Córdoba as part of a network providing advice and assistance to facilitate integration.

11. The Syria Programme, which granted humanitarian visas to people affected by the conflict in Syria, had been set up in 2014 with the support of the International Organization for Migration and the Office of the United Nations High Commissioner for Refugees. The Programme was based on the engagement and involvement of civil society and sponsors who volunteered to provide food and accommodation, so as to facilitate migrants' integration into Argentine society. An interministerial round table had been set up in 2016, coordinated by the National Migration Directorate, to assist newly arrived migrants and ensure implementation of the Syria Programme. An action plan had also been developed to support the beneficiaries of the Programme, within the context of the Emerging Resettlement Countries Joint Support Mechanism and the project on strengthening international protection, reception and integration of refugees in Argentina, funded by the European Union.

12. Within that framework, various initiatives had been launched, such as pre-arrival orientation sessions delivered in Beirut, including information guides in the migrants' languages, and provision of assistance for migrants in transit, notably in airports. Two meetings had been held in 2017 and 2018 with authorities responsible for the Syria Programme, and another in 2018 for sponsors and beneficiaries of the Syria Programme. A map had been developed of sponsors who might be interested in expanding their role in the Programme; a call had gone out for Arabic translators and interpreters; actions had been carried out to promote interculturalism and raise awareness of the social and economic development resulting from the migration policies in force; experts in sociocultural inclusion had been hired in various regions to ensure inclusion of migrants by strengthening the links with the communities themselves; and Spanish language lessons were provided for migrants. Surveys had also been conducted to identify the specific obstacles faced by migrant women and children from Syria. Between 2014 and September 2019, around 445 Syrians had benefited from the Programme.

13. **Mr. Enríquez** (Argentina) said that migration matters fell exclusively within the purview of the Federal Government; therefore, any regulations established at the local level had no status within the national legal framework. Act No. 6116 of the province of Jujuy setting out the obligation for migrants in transit to hold health insurance and empowering the provincial government to draw up agreements to give effect to the law was therefore not applicable. As Jujuy bordered the Plurinational State of Bolivia, many Bolivians who did not pay social security in Argentina used the free health-care services available in Jujuy, and the local authorities had devised the law in an effort to address that challenge. However, since that law was not applicable, discussions were under way with the Bolivian authorities with a view to finding a solution based on the principle of reciprocity.

14. Similarly, Decree No. 136 of 2019, adopted in the province of Chubut, which empowered the provincial government to implement the expulsion and prohibition on entry of all migrants with criminal records, was not applicable. The decree provided for the conclusion of agreements with the National Migration Directorate, which was the only entity competent to regulate the entry and stay of migrants.

15. With regard to the concern expressed by Mr. Oumaria about the need to harmonize the Convention with the Global Compact for Safe, Orderly and Regular Migration into national law, he noted that the Government had signed the Compact, but that Argentine law provided for equal treatment for all and enshrined rights and protections for migrants that went beyond the scope of the Compact. Within the framework of the Migration Act, the visa application process for persons from countries of the Southern Common Market was simplified in order to facilitate regional integration as a first step towards international integration; the same approach was taken in other regions, such as the European Union.

16. Regarding the recommendation adopted by the Committee on the Protection of All Migrant Workers and Members of Their Families – in paragraph 34 (c) of the Committee's 2011 concluding observations on Argentina's initial report (CMW/C/ARG/CO/1) – that Argentina should review the definition of "migrant workers" to ensure that it covered self-employed workers, article 23 of the Migration Act covered property owners and investors

(which could include small business owners), who were necessarily self-employed. That recommendation should therefore be revised or reconsidered.

17. **Mr. García** (Argentina) said that the Museum of Immigration, which was managed by the *Tres de Febrero* National University in Buenos Aires, was housed in the former *Hotel de Inmigrantes*. Upon his return to Argentina, he would hold a meeting with the General Director of the International Contemporary Art Biennial of South America (BIENALSUR) to discuss dedicating a space in the Museum of Immigration to migrants of African descent and from other countries in South America, which the Committee would be invited to visit.

18. While freedom of the press was protected by law, complaints of defamatory or derogatory articles could be submitted to the Public Prosecution Service and accused persons were prosecuted. The National Migration Directorate had been involved in the dissemination of public information messages, including an article setting out the Directorate's position on migration. Migration was a fundamental building block of the country, which was welcomed by the majority of the population. Regarding the validation of qualifications obtained abroad, a streamlined process was in place to recognize the qualifications predominantly of Venezuelan health professionals and oil engineers to fill that skill gap in Argentina and enable the persons concerned to find employment in line with their qualifications.

19. **Ms. Landázuri de Mora** (Country Rapporteur), noting the Government's willingness to share its good practices with the Committee and to ensure that migrants could contribute to the country, said that the Convention set out a very broad set of rights and guarantees for migrants. The mass migratory flows from Venezuela were a challenge for the region, calling for quick responses from various countries and she recognized the Government's leadership in that respect. She would like more information on the reception procedures for Venezuelans entering Argentina. Many Venezuelans waiting to receive residence permits were forced to return home in the interim owing to the backlog caused by the huge numbers applying. Those who did not return home risked a fine, which no Venezuelan could afford, especially at a time when they were seeking work and reunification with their families. How did the Government envisage addressing that situation?

20. Forced expulsion to Venezuela was totally unacceptable as Venezuelans faced a risk to their lives if returned, and alternatives must therefore be established. Under the Convention, detention in the context of migration was to be used strictly as a last resort. Yet the "retention" procedure in the country, as described in paragraph 117 of the State party's report (CMW/C/ARG/2), amounted to detention or deprivation of liberty, as migrants were not able to communicate with their families and often did not have access to a lawyer. She asked what action the Government was planning to take in that respect.

21. The Committee was currently drafting a general comment concerning migrants' right to freedom, which would offer some alternatives to the deprivation of liberty. She wondered whether the Federal Council for Children, Adolescents and the Family or other child protection bodies were consulted with regard to the use of expulsion procedures against parents who had Argentine children, and what support the Government provided to those children who settled in their parents' country of origin to ensure their well-being.

22. She wished to receive more information on migrants' access to social, education and health services. The delegation should explain how the health-care system introduced in Jujuy province was compatible with article 28 of the Convention, which guaranteed migrant workers and members of their families the right to receive emergency medical care where required.

23. It would be useful to know how the procedure for notifying a migrant of his or her expulsion complied with the guarantees listed in paragraph 89 of the State party report, including the right to be heard promptly and to have sufficient time and resources to prepare a defence. She wished to know whether an objective mechanism existed for assessing the personal and family situation of migrants who were subject to an expulsion order, and what guarantees were in place to ensure that the children of such migrants were

provided with an independent defence counsel who could invoke the best interests of the child and their right to a family life.

24. While the delegation had acknowledged the shortcomings in the State party's legislation, and had said it wished to remedy them, it was important that those shortcomings should not affect the rights of migrant workers and their families; under the Convention, migration policies transcended the government or administration that applied them. The delegation should provide more information on the employment status of migrant workers who were not business owners or investors but small-scale entrepreneurs such as street vendors, many of whom were of African descent. Would it be possible for them to be granted the status of independent workers? That could be a positive factor in their applications to settle in Argentina. The excessive use of force by police officials against those workers was unacceptable. Lastly, she wished to know the extent to which civil society representatives had been involved in the preparation of the report.

25. **Mr. Botero Navarro** said that he welcomed the efforts undertaken by the State party to eliminate statelessness, in particular through the recent adoption of legislation on the recognition and protection of stateless persons, which was a major step forward for Latin America. He wished to commend the State party, on behalf of the Committee, on its unprecedented decision to lift the re-entry ban ordered against the Peruvian nurse Vanessa Gómez Cueva, who had been deported from Argentina with no choice but to leave two of her three Argentine children behind. That decision meant that she was free to resume her family life in Argentina. He believed the delegation had undertaken at the previous meeting to analyse, on an individual basis, the 125 similar cases raised by the Committee. He wished to know what elements would be taken into account in that analysis. Would they include, for example, the fundamental principle of the best interests of the child?

26. One of the issues that the delegation had addressed at the previous meeting was how the National Migration Directorate assessed proportionality. Drawing the delegation's attention to the requirements of proportionality described in the Committee's joint general comments Nos. 3 and 4 (2017), which had been drawn up in conjunction with the Committee on the Rights of the Child, he said that elements to be borne in mind when assessing proportionality in cases potentially leading to deportation included the migrant's age on arrival in the destination country, the amount of time spent there, the migrant's family ties in the receiving State, the amount of time that had elapsed since the crime had been committed, and proof of the migrant's rehabilitation.

27. The issue of excessive use of force by police officials against Senegalese street vendors had been raised repeatedly not only by the Committee but also by many other United Nations human rights mechanisms since 2017. He wished to know what measures were being taken to investigate and prosecute the perpetrators of those acts, what reparation would be granted to the victims and what system was in place to ensure that no reprisals were taken against victims reporting acts of violence.

28. He would also appreciate information on how the State party implemented article 15 of the Convention relating to the right of migrant workers not to be deprived of their assets, including the matter of compensation. With regard to the use of Emergency Decree No. 70/2017 in the prosecution of serious crimes such as drug trafficking, he wished to know why factors such as the severity of the crime and the right to a family life were not considered when establishing the minimum threshold of the sentence imposed. He would also appreciate more detailed information on the proportion of foreigners in prisons, and on why the time limits provided for under the Emergency Decree were shorter than in previous legislation.

29. **Mr. El-Borai** said that he would appreciate greater clarification of the reply he had received at the previous meeting in response to his question concerning the review of the constitutionality of Emergency Decree No. 70/2017. Was it the Supreme Court, the Constitutional Court or the Court of Cassation that was considering the case?

30. **Mr. Charef** said he hoped that the countries of origin of migrants represented at the Museum of Immigration in Buenos Aires would soon be expanded to reflect all the component groups of Argentine society. He looked forward to following that up on a future visit to the museum.

31. **Ms. Dzumbur** said that she would appreciate more information on procedures relating to unaccompanied minors and on steps taken to integrate them in Argentine society. She also wished to know how gender equality was ensured and would be grateful for details of legislation and anti-discrimination policies in that regard, as well as gender-disaggregated migration statistics. She wondered what information was disseminated to migrants, and in what form, to make them aware of their rights. She wished to know whether the training on the Convention given to staff was continuing or ad hoc in nature. She would also appreciate information on cooperation between the Government and migrants' States of origin and on the extent of cooperation with civil society organizations regarding migration procedures.

The meeting was suspended at 11.55 a.m. and resumed at 12.15 p.m.

32. **Mr. Enríquez** (Argentina), referring to the issue of Venezuelan migrants, said that expulsion decisions were assessed on a case-by-case basis. If the person had left the Bolivarian Republic of Venezuela because of persecution of any kind, that was taken into account. The Government took the concept of non-refoulement seriously. Migrants subject to an expulsion order could also invoke the Convention relating to the Status of Refugees. The courts took years to process applications under that convention, and applicants would generally stay in Argentina until their case was resolved. Applicants who had committed a crime were usually released once they had served half their criminal sentence.

33. Venezuelans were covered by the Agreement on Residency for Nationals of MERCOSUR Member States. Persons not planning to settle in Argentina were granted six-month "transitory residence" and could come and go during those six months. However, if a person wished to change status from transitory to temporary or permanent residence, the first thing they needed to do was to obtain "precarious residence" status. Despite its name, that type of residence gave migrants the same rights as other types of residence, such as the right to work, study and open a bank account while they waited for temporary or permanent residence permits. It took approximately two months to issue temporary or permanent residence permits. The time frame for granting "precarious residence" was approximately one month. During that period, migrants such as the Venezuelans in question must not leave the country; if they did, they would have to start the process from scratch. It was therefore important that they waited to receive their "precarious residence" status, after applying through the RADEX system.

34. The Migration Act used the term "retention", rather than detention, and provided for two types of detention, used in exceptional circumstances: preventive detention and confirmed detention. Preventive detention was undertaken where there was a risk that a person would not submit to an expulsion order. Confirmed detention took place when an expulsion order had been authorized by the National Migration Directorate and confirmed by a court. Only persons whose expulsion orders had been confirmed by a court were detained; preventive detention was not undertaken. That meant that, in practice, no one was deprived of liberty while awaiting a decision on their expulsion.

35. The Convention permitted the expulsion of migrants who were in conflict with the law. All expulsion decisions sought to balance the rights enshrined in the Convention, including the rights of children and adolescents, against the right of the State to implement its policies and the human rights of the rest of society. A dedicated division of the National Migration Directorate evaluated the circumstances in each case, including parental relationships. Expulsion decisions were subject to judicial review.

36. Although the Migration Act did not expressly provide for the notification of migrants in conflict with the law of their rights in the event of their possible expulsion, that provision was contained in Emergency Decree No. 70/2017. The notification must be sent to the assigned defence counsel, the individual and their private defence counsel, if applicable, and migrants had the right to translation, if necessary. To date there had been no cases in which a child of a migrant in conflict with the law had required their own defence counsel, nor any objections in that regard.

37. As recommended by the Committee in its 2011 concluding observations (CMW/C/ARG/CO/1), the definition of self-employed workers contained in Decree No. 616/2010 complied with the definition set out in article 2 of the Convention. He would

welcome the Committee's reconsideration of Argentine legislation's compliance with the provisions of the Convention. It was possible that some of the problems encountered by Vanessa Gómez Cueva had been due to the exceptional humanitarian circumstances surrounding the hearings in her case. Matters such as proportionality and the involvement of specialists and experts in such cases were at the discretion of the judge.

38. Any judge, in any court, could rule on the constitutionality of legislation. The court that had ruled Emergency Decree No. 70/2017 unconstitutional was inferior to the Supreme Court of Justice, which was considering the matter but had not made a ruling.

39. **Ms. Quinteros** (Argentina) said that both the National Plan for Equal Opportunities and Rights 2018–2020 and the National Action Plan for the Prevention and Eradication of Violence against Women and Assistance to Victims 2017–2019 applied to Argentine nationals and migrants equally. Institutional violence, including that suffered by lesbian, gay, bisexual, transgender and intersex migrants, was treated as a crime. Diversity of all kinds, including sexual diversity, was valued, and the National Institute to Combat Discrimination, Xenophobia and Racism drafted and disseminated national diversity policies, including policies benefiting migrants and refugees. It also received and investigated complaints of discrimination of all kinds. Although those complaints did not relate to crimes, the Institute could oblige the perpetrators to undergo training to change their behaviour.

40. Emergency health care was provided to all foreigners in Argentina, including migrants. Migrants could also access contributory benefits, for example pensions, on an equal footing with Argentine nationals. However, there was a minimum residency requirement for non-contributory benefits.

41. **Ms. Landázuri de Mora** (Country Rapporteur) said that the continuous improvement of migration measures was of particular importance in Latin America, where migration flows posed significant challenges. All actors, from the Federal Government to migrant communities themselves, were responsible for managing the migration situation. The review of administrative decisions should go beyond their mere ratification and examine the administration of justice, with a focus on the guarantees and rights enjoyed by migrants.

42. The decision in the case of Vanessa Gómez Cueva was positive, and the same perspective and good faith should prevail in the examination of other cases, particularly those of Liz Moreta and Jhonny Quiróz. The Migration Act should be applied fully and the State's work continued in line with the Convention, with both instruments guiding the actions of migration authorities, judges and courts. The authorities and the media should refrain from drawing a link between crime and migrants. The State party should continue to take the lead in regional migration processes and ensure that reforms were geared towards making Argentina a welcoming place for immigrants. Migrants' rights must be central to all decisions.

43. **Mr. García** (Argentina) said that his country was one of the most welcoming in the world, and there was strong political will to maintain that status. He looked forward to receiving the Committee's continued guidance so that his country's potential might be fully realized.

44. **The Chair** said that he wished to thank the delegation for the constructive dialogue that had taken place and encourage the State party to adopt any necessary measures to follow up the Committee's recommendations.

The meeting rose at 1.05 p.m.