



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Excerpts of Concluding Observations and Recommendations from UN Treaty Monitoring Bodies

Universal Periodic Review:

ARGENTINA

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations and the Human Rights Council's Special Procedure Reports, relating to issues of interest and persons of concern to UNHCR with regards to Argentina.

1. Treaty Body Reports

E/C.12/ARG/CO/3

**COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 47th
Session**

14 December 2011

15. The Committee notes with concern the large number of workers in the informal economy in the State party and regrets that a significant percentage of them, including migrant workers, lack access to the social security system, in particular pension schemes. The Committee also expresses concern about discrimination with regard to conditions of work and minimum wages experienced in particular by outsourced (*tercerizados*) or temporary workers, and women in domestic work, the textile industry and the agricultural sector (arts. 6 and 7).

The Committee urges the State party to continue its efforts to reduce the informal sector of the economy with a view to promoting employment in the formal sector and, in this way, ensure the full enjoyment of economic and social rights by all workers. It recommends that the State party extend the applicability of the minimum wage legislation to those sectors where it still does not apply. The Committee recommends that measures be taken to ensure the full legal protection of workers irrespective of their sector of employment. It also encourages the State party to consider modifying the residency requirements established for migrant workers in line with the National Constitution and the Migration Act to ensure their access to non-contributory social benefit schemes.

20. The Committee is concerned that requirements to receive the universal allowance for children (*Asignación Universal por Hijo*), which is granted by law, in practice exclude certain groups such as migrants and their children from receiving this benefit. **The Committee calls upon the State party to consider adopting all the necessary**

measures to ensure the unrestricted coverage of the universal allowance for children, in particular those from marginalized and disadvantaged groups, such as children of migrant workers in an irregular situation and children of persons deprived of their liberty.

21. The Committee reiterates its concern (E/C.12/1/Add.38 para. 20) about the continuing housing deficit in the State party, resulting from the gap between the needs of the large parts of the society and the offer of adequate and affordable accommodation. The absence of reliable official analytical data in this respect constitutes an important obstacle to addressing this problem in an effective way. The Committee is concerned that speculation with land, real estate, and construction has created difficulties in the access to housing for middle and low income populations. It also reiterates its concern over forced evictions of disadvantaged and marginalized individuals and groups in contravention of the State party's obligations under the Covenant, which affect in particular migrants and indigenous peoples (art.11. 1).

The Committee urges the State party to adopt housing policies with a view to ensuring access to adequate and affordable housing with legal security of tenure for everyone. It calls upon the State party to effectively counter speculation in the land, real estate, and construction markets. In light of the Committee's general comment No. 4 (1991) on the right to adequate housing. The Committee also urges the State party to take specific measures, legislation or otherwise, to ensure that persons forcibly evicted are provided with alternative accommodation or just and fair compensation in line with general comment No. 7 (1997) of the Committee on forced evictions.

24. The Committee is concerned that despite the efforts by the State party to ensure universal access to education there are still incidences of children remaining outside of the education system, illiteracy, course repetition, and school drop-out, especially among disadvantaged and marginalized indigenous communities. It also notes with regret that indigenous communities do not always enjoy the right to intercultural bilingual education (art. 13).

The Committee recommends that the State party effectively implement existing legislation to guarantee the right to education and to address, in particular, the problems of children remaining outside the education system, illiteracy, course repetition, and school drop-out. The Committee urges the State party to continue its efforts to remove disparities between different societal groups and promote the educational advancement of those disadvantaged and marginalized groups and provinces. It also recommends that the State party undertake effective steps to guarantee the access to intercultural education of indigenous peoples and to ensure that it is adapted to their specific needs.

CMW/C/ARG/CO/1

**COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES, 15th Session
2 November 2011**

Data collection

13. The Committee regrets the lack of comprehensive information and statistics on some migration-related issues, such as the number, employment situation and access

to basic services of all migrant workers and members of their families, including those in an irregular situation. It recalls that such information is indispensable to an understanding of their situation in the State party and to an assessment of the implementation of the Convention.

14. The Committee requests the State party to include in its next periodic report disaggregated information on the number of migrant workers and members of their families, including those in an irregular situation, who are living in the State party; on the fields and conditions of employment of migrant workers; and on the enjoyment by migrant workers and their family members of their rights under the Convention and the Migration Law. When precise information is not available, the Committee would appreciate receiving data based on studies or estimated assessments.

Non-discrimination

17. The Committee takes notes of the information provided by the State party concerning the investigation, by INADI, of complaints about discrimination against migrants. In this connection, it is concerned at reports about discriminatory attitudes towards migrants from African and neighbouring countries, particularly Senegal, the Plurinational State of Bolivia and Paraguay, media coverage associating migrants with criminal acts and abuse of social benefits, xenophobic statements by politicians, and discrimination against migrant children at school.

18. The Committee recommends that the State party:

(a) Adopt proactive measures to eliminate discriminatory stereotypes about migrant workers and members of their families, in political discourse as well as in the media, by strictly applying criminal law provisions and sensitizing law enforcement officials, politicians, journalists and the general public on the discriminatory nature of such acts;

(b) Publicly condemn discriminatory acts targeting migrant workers and members of their families, remind the media of its responsibility to report critically on such acts, and promote the adoption of voluntary codes of conduct by the media and other relevant stakeholders;

(c) Ensure that teachers respect the dignity and cultural identity of migrant children, report any instances of discrimination against migrant children to the relevant authorities, and promote a culture of tolerance and respect for diversity.

31. The Committee notes with concern that the State party is a country of destination for migrants, in particular women and children, trafficked for sexual and labour exploitation. While noting the State party's efforts to combat trafficking in persons and provide assistance to victims, including legal, medical, psychological and social assistance and shelter, through the Office for the Rescue and Assistance of Victims of Trafficking and, once victims have testified in judicial proceedings, through the National Secretariat for Children, Adolescents and the Family within the Ministry of Social Development, the Committee is concerned about:

(a) The low prosecution and conviction rates of and lenient sentences for traffickers;

(b) The lack of coordination of anti-trafficking efforts between law enforcement authorities at the federal, provincial and municipal levels;

(c) The acceptance of bribes and collusion with traffickers by police officers and other public officials involved in the implementation of anti-trafficking measures, in particular at the provincial level;

(d) The lack of resources of the Office for the Rescue and Assistance of Victims of Trafficking, which mainly operates in the province and the city of Buenos Aires, and the insufficient number of adequate shelters for trafficking victims;

(e) The limited effectiveness of victim identification and referral mechanisms.

32. The Committee recalls the recommendations of the Special Rapporteur on trafficking in persons, in particular women and children (A/HRC/17/35/Add.4, paras. 93-96), and recommends that the State party:

(a) Continue providing training to judges, prosecutors, police officers and border guards on migration and trafficking, victim identification, protection and assistance, victim-friendly investigation methods, and the strict application of the Anti-Trafficking Law (No. 26364);

(b) Enhance coordination between federal, provincial and municipal authorities in implementing anti-trafficking measures;

(c) Bring to justice public officials complicit in crimes of trafficking and provide police officers with anti-corruption training, especially at the provincial level;

(d) Allocate adequate resources to the Office for the Rescue and Assistance of Victims of Trafficking and to the National Secretariat for Children, Adolescents and the Family, extend their services and shelters to the provinces, and support non-governmental organizations that provide victims with rehabilitation and assistance;

(e) Provide victims of trafficking, including victims from non-MERCOSUR countries, with an opportunity to regularize their situation;

(f) Adopt checklists and protocols and train border guards, labour inspectors and migration and other law enforcement officials to ensure the prompt identification of victims of trafficking and the referral of those with protection needs to the asylum procedure;

(g) Adopt a national action plan on trafficking with measurable indicators and targets.

33. The Committee welcomes the regularization programmes for migrants from Mercosur and associated States (*Plan de Regularización Documentaria "Patria Grande"*) and for migrants from non-Mercosur countries who are under a contract of employment (DNM regulation No. 40164/2007). However, it notes with concern:

(a) That almost 200.000 applicants were not able to complete the regularization procedure under the *Patria Grande* programme;

(b) Administrative barriers to regularization, such as limited access to information on the regularization procedures, administrative costs, the requirement of a permanent domicile, and the need to present a certificate of legal entry upon renewing residence permits;

(c) The exclusion of self-employed migrant workers and of migrant workers without an employment contract from non-Mercosur countries from the regularization procedure; and

(d) The lack of regularization criteria based on humanitarian grounds for migrants from non-Mercosur countries.

34. The Committee recommends that the State party:

(a) Ensure that migrant workers and members of their families in an irregular situation have effective access to information on existing procedures for regularizing their situation;

- (b) Facilitate migrant workers' access to regularization procedures by extending deadlines for applicants, reducing administrative fees as well as documentation requirements, and by simplifying regularization procedures;**
- (c) Review the definition of "migrant workers" to ensure that it covers self-employed workers, in line with articles 2 (h) of the Convention and article 23 of Decree No. 616/2010, to enable self-employed migrants from non-Mercosur countries to access regularization procedures; and**
- (d) Consider including humanitarian criteria among the grounds for granting residence permits to migrant workers from non-Mercosur countries.**

CEDAW/C/ARG/CO/6

COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, 46th Session

16 August 2010

Trafficking and exploitation of prostitution

27. While commending the State party for having embarked upon placing the issue of trafficking in human beings high on the national agenda, the Committee is concerned about the transnational nature of the crime of trafficking and exploitation of prostitution, for example the cross-border network of recruiters involved in trafficking, and the reintegration of victims in the countries of origin. Furthermore, the Committee notes the need to work with the related machinery at the provincial and municipal levels, especially in northern Argentina and in the north-eastern areas where there are more groups at risk.

28. The Committee urges the State party to further strengthen its efforts in anti-trafficking activities with a view to addressing fully and comprehensively the complexities of a crime that is international in nature. The Committee also urges the State party to complement Law No. 26,364 of April 2008 by ensuring adequate protection to all women, independent of their age, as well as individuals who have been trafficked and who fear being subjected to persecution upon return to their country of origin, in accordance with international standards.

Women refugees and asylum-seekers

45. The Committee is concerned that, in spite of the enactment of the refugee law (Law No. 26,165), the establishment of the National Refugee Commission (CONARE) and the State party's participation in the regional programme of the Office of the United Nations High Commissioner for Refugees, the State party has not yet adopted all the necessary internal regulations to facilitate the effective implementation of the law and to fill some protection gaps, particularly those concerning asylum-seekers in vulnerable situations, including women, girls and unaccompanied children.

46. The Committee urges the State party to facilitate the full and effective implementation of the refugee law (Law No. 26,165), particularly with regard to the protection of female asylum-seekers and refugees, as well as unaccompanied children, in particular through adopting all the necessary internal regulations. It also encourages the State party to continue to provide training to border migration and asylum officials to ensure that they adopt a gender-sensitive approach, effective implementation of a proper identification system and gender-sensitive measures in the refugee status determination procedure, including with

regard to asylum applications based on gender violence. The Committee also urges the State party to complement Law No. 26,364 of April 2008 by ensuring adequate protection, in accordance with international law, to all women, independent of their age, as well as to individuals who have been trafficked and who fear being subjected to persecution upon return to their country of origin. In addition, measures should be adopted to ensure that women and girls who are refugees or asylum-seekers do not fall victim to trafficking in human beings or migrant smuggling, to create a mechanism to promptly identify victims of trafficking and to ensure the referral of those who might have protection needs to the asylum procedure.

CRC/C/ARG/CO/3-4

COMMITTEE ON THE RIGHTS OF THE CHILD, 54th Session

21 June 2010

Non-discrimination

31. The Committee notes Decree No. 1086/2005 establishing a national plan against discrimination. While welcoming the efforts of the State party to attend to the needs of disadvantaged children, as well as to establish programmes to promote bilingual and intercultural education for indigenous children and health programmes focusing on the needs of indigenous children, the Committee is nevertheless concerned at persistent reports of discrimination, social exclusion and physical, sexual and psychological abuse of indigenous children, who represent about 3 to 5 per cent of the total population in the country. The Committee notes with concern that disparities affecting the north-eastern and north-western provinces may lead to discrimination; for example, the risk of children dying in their first year of life is 60 per cent higher in those provinces than in the rest of the country, and the illiteracy rate, almost zero elsewhere in the country, is 11 per cent in that area. The Committee is further concerned at the stigmatization and discrimination faced by adolescents living in poverty in urban centres or in street situations in the country and by children from a migrant background.

32. The Committee urges the State party to increase its efforts:

(a) To fight against discrimination, social exclusion, and physical, sexual and psychological abuse of groups of children in vulnerable situations, in particular indigenous children;

(b) To fight against the stigmatization and discrimination faced by adolescents living in poverty in urban areas or in street situations and by children from a migrant background.

33. The Committee further requests that specific information be included in the next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Durban Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Committee's general comment No.1 (2001) on the aims of education.

Unaccompanied, refugee or asylum-seeking children

71. The Committee welcomes the enactment of Act No. 26165 in November 2006 and the creation of the National Refugee Commission (CONARE). Nevertheless, the Committee is concerned that the State party has not adopted any legal procedures to deal with unaccompanied asylum-seeking children. It is further concerned that in the determination of the asylum request, the principle of the best interests of the child is not always applied. It is further concerned that appropriate care, social and material assistance for unaccompanied refugee or asylum-seeking children is not always provided.

72. The Committee urges the State party to adopt legal procedures dealing with unaccompanied asylum-seeking children, taking into account the Committee's general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin. The State party should also develop formal procedures for the best interests determination, which must always be considered. The State party should also ensure that all unaccompanied refugee or asylum-seeking children are provided with the necessary social and material assistance, bearing in mind gender and cultural sensitivities.

CRC/C/OPSC/ARG/CO/1

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY, 54th Session

18 June 2010

Measures adopted to protect the rights and interests of child victims of offences prohibited under the Optional Protocol

33. While noting the principles of equality and non-discrimination enshrined in Act No. 26061 on Comprehensive Protection of the Rights of Children and Adolescents, the Committee is nevertheless concerned that children who are not nationals of the State party may have limited access to procedures of refugee protection and may be sent back to their country of origin without adequate examination of their individual situation and without monitoring of the conditions under which they may be returned.

34. The Committee recommends that the State party, taking into account its general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin:

(a) Ensure that children who are not nationals of the State party and who may be victims of offences under the Optional Protocol have adequate access to procedures of refugee and victim protection and have their individual situation examined before being sent back to their country of origin, even if it is on a voluntary basis;

(b) Develop comprehensive procedures for the early identification of child victims of offences under the Optional Protocol, including by ensuring their proper protection so as to encourage them to report cases.

CRC/C/OPAC/ARG/CO/1

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT, 54th Session

18 June 2010

Assistance for physical and psychological recovery

17. The Committee is concerned that no specific measures have been taken to identify children entering Argentina who may have been recruited or used in hostilities abroad. The Committee is concerned at information that such children do not have access to interpreters/translators in their interactions with medical doctors and social workers. Furthermore, it is concerned at the absence of physical and psychological assistance for these children once they have left medical facilities.

18. The Committee recommends that the State party identify and assess the situation of children entering Argentina who may have been recruited or used in hostilities abroad, and provide them with immediate, culturally sensitive and multidisciplinary assistance for their physical and psychological recovery and their social reintegration in accordance with article 6, paragraph 3, of the Optional Protocol. The National Refugee Commission (CONARE), the Ministry of Social Development and the government of the City of Buenos Aires, where most refugee and asylum-seeker children are located, should adopt the necessary assistance programmes for unaccompanied or separated children. Furthermore, access to interpreters/translators should be facilitated for the children's interaction with medical doctors and social workers. Once these children are released from medical facilities, their physical and psychological assistance should be guaranteed.

2. Reports of Special Procedures mandate holders

A/HCR/17/35/Add.4*

HUMAN RIGHTS COUNCIL, 17th Session

Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo

24 May 2011

Conclusions

90. Tools and referral mechanisms are not effectively in place for easy identification of victims, especially at the point of entry or of first contact with law enforcement agents. Currently, there are no solid and well-functioning inter-agency procedures in place to deal with victims of trafficking with international protection needs. The National Refugee Commission has never had a case of trafficking referred by relevant authorities, such as the Fiscal Unit of Assistance in Extortive Kidnapping or the National Secretariat of Childhood, Adolescence and Family. For this reason, the challenge of establishing mechanisms to better identify, refer and process asylum claims from potential victims in compliance with international protection needs remains.

Recommendations

**93. The Special Rapporteur recommends that the Government of Argentina:
[...]**

(m) Strengthen labour laws and raise public awareness, especially in migrant communities, on labour rights to check exploitative labour, which is rampant in the informal sector;

[...]

(p) Implement relevant training and capacity-building activities for authorities, including measures to establish a proper referral system to the refugee status determination procedure, as a mean to ensure that the right of victims to seek and be granted asylum, when appropriate, is fully respected;

95. The Special Rapporteur welcomes the acceptance by Argentina of a refugee victim of trafficking under the resettlement programme in 2009, and encourages the Government to continue to use resettlement as a response to trafficking victims with international protection needs.

96. The National Refugee Commission, with the technical assistance of UNHCR, should develop a full set of standard operating procedures, with the full participation of other stakeholders, including civil society. The procedures should include different measures to improve the identification, referral, risk assessment, social assistance and coordination among governmental and non-governmental actors to respond effectively to trafficking victims with international protection needs.

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