

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report

Universal Periodic Review: 3rd Cycle, 28th Session

ARGENTINA

I. BACKGROUND INFORMATION

Argentina acceded to the *1951 Convention relating to the Status of Refugees* and to the *1967 Protocol* (the two instruments hereinafter jointly referred to as the *1951 Convention*) in 1967. Furthermore, Argentina acceded to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) in 1972 and to the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*) in 2014.

The status and treatment of asylum-seekers and refugees in Argentina is mainly governed under the 2006 *Refugee Law No. 26.165 (Refugee Law)* and implemented by the National Refugee Commission (CONARE). CONARE has been entrusted by the refugee legislation to adjudicate asylum claims, and to promote durable solutions for refugees. The *Refugee Law* is further complemented by a number of decrees and administrative regulations dealing with specific issues, such as residence permits, documentation and extradition.

As of June 2016, Argentina hosted approximately 3,222 refugees (mainly from Peru, Colombia, Cuba and Syria) and 1,764 asylum-seekers (mainly from Senegal, Haiti and Cuba). Approximately 38 per cent of the refugees and asylum-seekers residing in Argentina are female. In 2014, Argentina established the “*Special Programme for the Issuance of Humanitarian Visas for Foreigners Affected by the Conflict in the Syrian Arab Republic.*” The programme was extended in 2015 and 2016. Since its entry into force, more than 250 humanitarian visas have been issued to facilitate the arrival of persons affected by the conflict.

UNHCR’s operation in Argentina is focused on providing support to refugees and asylum-seekers with a view to facilitating their local integration and promoting their self-sufficiency. UNHCR also supports the work of CONARE through technical advice, regular training and capacity-building support to ensure the implementation of fair and efficient refugee status determination (RSD) procedures.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 2nd cycle UPR recommendations

Linked to 2nd cycle UPR recommendation no. 99.2: “Accede to/ratify the 1961 Convention on the Reduction of Statelessness (Hungary, Portugal, Iraq).”¹

UNHCR commends Argentina for its accession to the *1961 Convention* in 2014. Argentina’s accession to the *1961 Convention* is in line with the actions foreseen in the framework of the *Brazil Declaration and Plan of Action (BDPA)* Chapter on Statelessness² and with the *Global Action Plan to End Statelessness*.³ The Argentine legislation and procedures dealing with the acquisition, loss and deprivation of nationality are generally in line with international standards on the prevention of statelessness prescribed under the *1961 Convention*.

Linked to 2nd cycle UPR recommendation no. 99.60: “Continue to make progress on combatting violence against women and on the efforts to sanction and prevent human trafficking (Venezuela (Bolivarian Republic of)).”

UNHCR commends Argentina for the amendment of its 2008 anti-trafficking legislation (*Law No. 26.364*), with the enactment of *Law No. 26.842* in 2012. Through this change, Argentina has expressly incorporated into its anti-trafficking legislation the right for individuals who have been trafficked to remain in the country, to receive a residence permit and documentation, and to be informed about their right to seek asylum.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Local integration of refugees and asylum-seekers

Linked to 2nd cycle UPR recommendations no. 99.114: “Ensure adoption of measures for social integration of refugees and asylum seekers that are fully in line with international standards (Belarus)”.

The provision of humanitarian assistance to newly arrived asylum-seekers and the development of programmes for the local integration of refugees remain a major challenge in Argentina.

In 2016, the National Secretary for Families, Children and Adolescents (SENNAF), falling under the Ministry of Social Development, started providing direct assistance to vulnerable asylum seekers and the CONARE Secretariat created a social section within the “Assistance and Local Integration Plan”. However, the process of local integration is still primarily supported through the efforts of UNHCR and its local operational partners.⁴ In this context, UNHCR promotes the formal adoption of a Protocol among CONARE, SENNAF, ADRA and MIRARES, which has been agreed and is being applied as an informal mechanism, in order to ensure coordination of all institutions involved in providing direct humanitarian assistance.

¹ All recommendations made to Argentina during its 2nd cycle UPR can be found in: “Report of the Working Group on the Universal Periodic Review of Argentina” (12 December 2012), A/HRC/22/4, available at: <http://ohchr.org/EN/HRBodies/UPR/Pages/ARSession14.aspx>.

² *Brazil Declaration and Plan of Action: A Common Roadmap to Strengthen Protection and Promote Sustainable Solutions for Refugees, Displaced and Stateless Persons in Latin America and the Caribbean within a Framework of Cooperation and Solidarity*, 3 December 2014, available at: <http://www.refworld.org/docid/5487065b4.html>.

³ UN High Commissioner for Refugees (UNHCR), *Global Action Plan to End Statelessness*, 4 November 2014, available at: <http://www.refworld.org/docid/545b47d64.html>.

⁴ The non-governmental organisations “Agencia Adventista de Desarrollo y Recursos Asistenciales” (ADRA) and “Fundación MIRARES: Migrantes, Refugiados y Argentinos Emprendedores Sociales”.

In addition, local integration is restricted when asylum-seekers and refugees, as non-nationals, face administrative obstacles to accessing the same social protection benefits available to nationals. In the case of non-national children or national children with non-national parents, a minimum of three years of “legal residence” in the country is required to have access to the “Universal Child Allowance for Social Protection” (*Asignación Universal por Hijo*). No exceptions to this requirement have been introduced yet to address the situation of vulnerable refugees or statelessness persons.

Recommendations:

UNHCR recommends that the Government of Argentina:

- a) Design and adopt a comprehensive public programme or social policy to ensure proper social assistance for asylum-seekers and durable solutions for refugees to facilitate their process of socio-economic integration;
- b) Allocate the necessary human resources and funding for the development of assistance and local integration programmes for refugees and asylum-seekers; and
- c) Revise the residency requirements established for refugees and asylum-seekers to ensure their access to non-contributory social benefit schemes, in line with the rights enshrined in the *National Constitution* and the *Migration Act*.

Issue 2: SGBV affecting refugees, asylum-seekers and stateless persons

Linked to 2nd cycle UPR recommendation no. 99.47: “Implement effectively the legislation on violence against women to combat misogynous stereotypes, discrimination and violence whose victims are women (France).”

Displacement carries with it a heightened risk of exposure to sexual and gender-based violence (SGBV) and displaced women and girls are at a disproportionately higher risk in this regard. In general, UNHCR considers that refugee women, who represent 38 per cent of the refugee population residing in the country, are often unaware of their rights and the available mechanisms to prevent SGBV and seek assistance in case of SGBV.

No official statistics are available on the prevalence of SGBV among refugee women. No strategy or mechanisms have been put in place to assess the risks of SGBV affecting female refugees and asylum-seekers, and to discuss preventive and response measures.

UNHCR’s Guidelines on Gender-Related Persecution emphasizes that: “persons raising gender-related refugee claims, and survivors of torture or trauma in particular, require a supportive environment where they can be reassured of the confidentiality of their claim. Some claimants, because of the shame they feel over what has happened to them, or due to trauma, may be reluctant to identify the true extent of the persecution suffered or feared.”⁵

Issues relating to domestic violence have been raised by the Human Rights Committee, in paragraphs 12-13 of its *Concluding Observations* on Argentina (98th session, 2010).⁶ SGBV

⁵ UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/01, available at: <http://www.unhcr.org/refworld/docid/3d36f1c64.html>. Other relevant measures may also be found in UNHCR’s *Guidelines on Claims Based on Sexual Orientation and/or Gender Identity*.⁵

⁶ UN Human Rights Committee (HRC), *Concluding Observations of UN Human Rights Committee: Argentina*, 8-26 March 2010, CCPR/C/ARG/CO/4, available at:

issues, with a particular focus on the protection of female asylum-seekers and refugees, were also addressed by the Committee on the Elimination of All Forms of Discrimination Against Women, in paragraph 46 of its *Concluding Observations* on Argentina (46th session, 2010).⁷

Recommendations:

UNHCR recommends that the Government of Argentina:

- a) Adopt and implement a SGBV strategy for the identification and prevention of, and response to, situations of SGBV affecting refugees, asylum-seekers and stateless persons; and
- b) Apply a more gender-sensitive approach in RSD procedures in Argentina in order to ensure that asylum claims submitted by women are examined in a manner that responds to their specific protection needs, including by assigning female officers and interpreters to female asylum-seekers and by adopting guidelines on gender-based persecution and persecution based on sexual orientation and gender identity.

Additional protection challenges

Issue 3: Effectiveness of the *Refugee Law*

Despite the enactment of the *Refugee Law*, Argentina has not yet completed the process of adopting the necessary decree to facilitate the effective implementation of it. Together with CONARE, UNHCR has been actively working on a comprehensive draft decree that was meant to be adopted in December 2016, which includes provisions that would help address existing protection gaps. However, due to the election of new government authorities, the draft decree is again under revision.

Recommendation:

UNHCR recommends that the Government of Argentina:

- a) Adopt the draft decree necessary for the effective implementation of the *Refugee Law*, particularly with regard to family reunification, RSD, the treatment of unaccompanied and separated children, gender-based asylum claims and the availability of durable solutions.

Issue 4: Recognition and protection of stateless persons

Despite Argentina's accession to the *1954 Convention*, the country has not implemented a statelessness law. Furthermore, no information on the size or characteristics of the stateless population in Argentina has been made available, and no steps have been taken to identify stateless persons. Additionally, no legislation have thus been adopted to regulate the legal status of any stateless population.

Adopting a comprehensive legal framework on statelessness and establishing a stateless determination procedure are the most efficient means for State parties to the *1954 Convention* to identify stateless persons and to guarantee their rights and protection.

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fARG%2fCO%2f4&Lang=en.

⁷ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding observations of the Committee on the Elimination of Discrimination against Women: Argentina*, 16 August 2010, CEDAW/C/ARG/CO/6, available at: <http://www.refworld.org/docid/52dd033e4.html>.

In 2015, a preliminary draft law on status determination procedures and the protection of stateless persons was presented before the National Congress. UNHCR is advocating for a discussion and revision of the draft before the formal submission for Congressional approval.

Recommendations:

UNHCR recommends that the Government of Argentina:

- a) Promote the development and approval of national legislation to implement a statelessness determination procedure, which would ensure the recognition and the protection of stateless persons who are not refugees; and
- b) Incorporate the protection provisions guaranteed in the *1954 Convention* into national legislation, including measures aimed at facilitating naturalization.

Issue 5: Legal migration framework and protection of migrant rights

In January 2017, Argentina adopted a *Necessity and Urgency Decree (DNU) N° 70/2017* amending *Migration Law N° 25.871*, its regulatory *Decree N° 616/2010*, and *Citizenship Law N° 346*. In addition, high-level Ministers and national authorities have announced a plan to establish a detention center for irregular migrants in the City of Buenos Aires.

The *DNU* introduces a stricter border management approach and affects the access to naturalization for asylum-seekers, refugees and stateless persons. It also removes a legal safeguard protecting refugees from residence cancellation resulting in an expulsion order, which is not provided for by the *Refugee Law*. Following the announcement and the adoption of the *DNU*, migrant organizations, human rights groups and other civil society organizations have expressed their concern that this could imply a regression in the human rights approach set by the *Migration Law*. They also filed judicial measures before national tribunals and the Inter-American Commission of Human Rights to challenge the *DNU*.

UNHCR has not been formally approached by the Government concerning the initiatives and no information has been provided on the measures and safeguards that would be eventually adopted to ensure the principles of international refugee law regarding persons subjected to migratory detention and/or expulsion.

Recommendation:

UNHCR recommends that the Government of Argentina:

- a) Preserve human rights standards set by the national migration legal framework and ensure safeguards that meet international human rights and refugee law standards in all migratory procedures, particularly safeguarding the right to asylum and the prevention of *refoulement* with regard to individuals subjected to expulsion measures, preventing arbitrary detentions and adopting alternative measures to migratory detention.

**Human Rights Liaison Unit
Division of International Protection
UNHCR
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ANNEX

Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

ARGENTINA

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations, UN Treaty Monitoring Bodies' Concluding Observations, and recommendations from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to Argentina.

I. Universal Periodic Review (Second Cycle – 2012)

Recommendation ⁸	Recommending State/s	Position ⁹
Statelessness		
99.2. Accede to/ratify the 1961 Convention on the Reduction of Statelessness	Hungary, Portugal, Iraq	Supported ¹⁰
Groups with specific needs		
99.19. Renew its efforts to protect vulnerable groups, particularly persons with disabilities, women and children	Iraq	Supported ¹¹
Detention		
99.35. Continue to improve conditions in the country's prisons and detention facilities, especially in provincial detention facilities	Germany	Supported
Sexual and gender-based violence		
99.47. Implement effectively the legislation on violence against women to combat misogynous stereotypes, discrimination and violence whose victims are women	France	Supported
Trafficking in persons		
99.59. Continue to take steps to address domestic violence and human trafficking through education and awareness campaigns and services to	Canada	Supported

⁸ All recommendations made to Argentina during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of Argentina" (12 December 2012), A/HRC/22/4, available at: <http://ohchr.org/EN/HRBodies/UPR/Pages/ARSession14.aspx>.

⁹ Argentina's views and replies can be found in: *Revision.1* (3 June 2015), A/HRC/22/4/Add.1/Rev.1*, available at: <http://ohchr.org/EN/HRBodies/UPR/Pages/ARSession14.aspx>.

¹⁰ *Addendum*: "6. Argentina accepts the following recommendations: ... 99.2 ..."

¹¹ *Addendum*: "11. Argentina accepts recommendations 99.18 and 99.19. Argentina's efforts are constantly guided by the premise that the effective promotion and protection of human rights, especially those of vulnerable groups, is attained by establishing a larger and better State presence in the different regions of the country and by making the State visible and accessible to all persons and to vulnerable groups in particular. To this end social policies have been reworked under different strategic approaches that have translated into public-sector initiatives, such as the universal child allowance, that aim to protect vulnerable sectors."

victims, as well as ensuring the effective application of the law against perpetrators		
99.60. Continue to make progress on combatting violence against women and on the efforts to sanction and prevent human trafficking	Venezuela	Supported
Birth registration		
99.74. Adopt the necessary measures to guarantee universal birth registration, with a particular emphasis on indigenous boy and girls	Mexico	Noted ¹²
99.75. Continue to strengthen the measures to guarantee children access to free birth registration	Uruguay	Noted ¹³
Refugees and asylum seekers		
99.114. Ensure adoption of measures for social integration of refugees and asylum seekers that are fully in line with international standards	Belarus	Supported
Migrants		
99.115. Revise the minimum required length of legal residence for migrants to access a disability or elderly pension and for their children to benefit from the program of universal child allowance	Mexico	Supported
99.116. Adopt proactive measures to eliminate discriminatory stereotypes about migrant workers and their families, in political discourse as well as in the media, as recommended by the CMW	Pakistan	Supported ¹⁴
99.117. Continue to make progress on measures against migrants' discrimination	Venezuela (Bolivarian Republic of)	Supported

II. Treaty Bodies

Human Rights Committee

Concluding Observations, (12 July 2016), [CCPR/C/ARG/CO/5](#)

Promoción y protección de los derechos humanos

¹² **Addendum:** “9. Argentina takes note of recommendations 99.74 and 99.75. However, both registrations of births and the first national identity card are available free of charge to all.”

¹³ **Addendum:** “9. Argentina takes note of recommendations 99.74 and 99.75. However, both registrations of births and the first national identity card are available free of charge to all.”

¹⁴ **Addendum:** “28. Argentina is developing policies to combat all forms of discrimination and therefore accepts recommendations 99.21, 99.28, 99.29, 99.30, 99.31, 99.32, 99.76, 99.116 and 99.117. In 2010, the National Institute to Combat Discrimination, Xenophobia and Racism launched a programme entitled “Afrodescendants against Discrimination, Xenophobia and Racism”, which comprises actions to raise the profile and increase awareness of Afro-Argentine identity and culture. In addition, a question on African heritage was inserted in the National Population, Household and Housing Census, and the Institute conducted an awareness-raising campaign called “I am Afro-Argentine”, which included training courses for census takers and staff at the National Statistics and Census Institute, as well as the population at large.”

5. Aunque toma nota con satisfacción de la información proporcionada por la delegación del Estado parte expresando su compromiso con la promoción y protección de los derechos humanos, el Comité observa con preocupación la falta de nombramiento del Defensor del Pueblo y la adopción de recientes medidas de reducción de personal y cambios institucionales en áreas destinadas a la protección de los derechos humanos, particularmente respecto a las instituciones destinadas al proceso de memoria, verdad y justicia (art. 2).

6. El Estado parte debe asegurar el fortalecimiento de las instituciones destinadas a la promoción y protección de los derechos humanos, particularmente las instituciones destinadas al proceso de memoria, verdad y justicia, a través de la participación de la sociedad civil y asignación de recursos materiales y humanos suficientes. De igual modo, debe procederse al nombramiento del Defensor del Pueblo a la brevedad posible.

Igualdad de género

7. Aunque toma nota de las medidas adoptadas por el Estado parte para promover la igualdad entre hombres y mujeres, el Comité lamenta la persistencia de las notables diferencias salariales entre hombres y mujeres, que se ubica en un promedio de 25 percent. El Comité lamenta asimismo que las mujeres siguen estando insuficientemente representadas en los sectores público y privado, en particular en los puestos decisorios (arts. 2, 3 y 26).

8. El Estado parte debe redoblar sus esfuerzos para eliminar los estereotipos de género sobre el papel y las responsabilidades de los hombres y de las mujeres en la familia y en la sociedad, y llevar adelante campañas de sensibilización al efecto. El Estado parte debe, asimismo, procurar el aumento de la participación de las mujeres en los sectores público y privado y, de ser necesario, aplicar medidas especiales de carácter temporal apropiadas para dar efecto a las disposiciones del Pacto. El Estado parte también debe adoptar medidas concretas para reducir la diferencia salarial que sigue existiendo entre las mujeres y los hombres y examinar todas las causas que hacen crecer esa disparidad.

Violencia de género y doméstica

9. El Comité observa con preocupación los informes que señalan que la violencia contra la mujer continúa representando un serio problema en el Estado parte (CCPR/C/ARG/CO/4, para. 11). El Comité lamenta la persistencia de las deficiencias en la aplicación de la Ley Integral para Prevenir, Sancionar y Erradicar la Violencia contra las Mujeres (Ley N° 26.485), la insuficiencia de presupuesto asignado para su implementación y la falta de implementación del Plan Nacional que allí se establece. El Comité acoge con beneplácito la ley que crea un cuerpo de abogados para las víctimas de violencia de género (Ley N° 27.210 de 2015), pero lamenta que ésta todavía no haya sido implementada (arts. 2, 3, 6 y 7).

10. El Estado debe incrementar sus esfuerzos para prevenir y combatir todas las formas de violencia de género, asegurando la aplicación efectiva del marco legislativo en vigor en todos los niveles del Estado y dotándolo de los recursos necesarios para su cumplimiento. El Estado debe investigar de manera pronta y efectiva los hechos de violencia contra la mujer, enjuiciando e imponiendo sanciones apropiadas. El Estado debe además hacer efectivo el derecho de las víctimas a una reparación que incluya una adecuada y justa compensación, así como capacitación y sensibilización para enfrentar la violencia de género en todos los ámbitos.

Tortura y malos tratos

13. El Comité observa con preocupación la violencia institucional penitenciaria que se manifiesta por el elevado número de casos de tortura y malos tratos contra personas privadas de libertad, producidas incluso por la existencia de autogobierno y el escaso número de condenas de los responsables y las sanciones leves impuestas a los autores. Aunque toma nota de la creación de un Registro Nacional contra la Tortura en 2014, el Comité lamenta que todavía no se pudo consolidar un sistema unificado de registro de hechos y víctimas de tortura en el ámbito federal. Le preocupa al Comité informes que dan cuenta de requisas vejatorias, alta tasa de violencia entre los detenidos, particularmente en la provincia de Buenos Aires, traslados forzosos y el recurrente uso de la reclusión en régimen de aislamiento como método de castigo. Le preocupa también que a solo un número reducido de víctimas de la tortura se le haya concedido una reparación tras las actuaciones judiciales. Pese a la adopción de la Ley 26.827 que creó el Sistema Nacional de Prevención de la Tortura y Otros Tratos o Penas Cruelles, Inhumanos o Degradantes en 2012, el Comité lamenta que el Mecanismo Nacional de Prevención aún no haya sido implementado (art. 7).

14. El Estado parte debe:

- (a) **Velar por que todas las denuncias de tortura o malos tratos sean investigadas de manera rápida, completa e independiente y que los responsables de esos actos comparezcan ante la justicia;**
- (b) **Asegurar que las víctimas reciban una reparación adecuada que incluya servicios de salud y de rehabilitación;**
- (c) **Asegurar que los exámenes forenses de los presuntos casos de tortura y malos tratos cometidos por agentes del Estado sean imparciales, exhaustivos y se lleven a cabo de acuerdo con el Protocolo de Estambul;**
- (d) **Implementar el sistema unificado de registros de hechos y víctimas de tortura, con el fin de establecer políticas específicas para a la prevención de la tortura y los tratos crueles, inhumanos o degradantes, incluso con la implementación de programas sistemáticos de formación en derechos humanos a las fuerzas del orden y de seguridad; y**
- (e) **Agilizar la adopción de las medidas jurídicas necesarias para asegurar que el mecanismo nacional de prevención sea establecido en todas las regiones del país, según lo previsto en el Protocolo Facultativo de la Convención contra la Tortura, y velar por que dicho mecanismo disponga de recursos humanos y financieros suficientes para funcionar eficientemente.**

Condiciones de detención

23. Aunque toma nota del decreto de emergencia carcelaria y de la intención del Estado parte de reformar el sistema penitenciario, el Comité expresa su preocupación por los altos niveles de hacinamiento, que se muestran incluso por la utilización de estaciones policiales como lugares permanentes de detención; las malas condiciones imperantes en los lugares de detención y las deficiencias en el acceso a servicios de salud adecuados, en el ámbito federal y provincial (art. 10).

24. El Estado parte debe adoptar medidas eficaces para mejorar las condiciones materiales de los centros penitenciarios, reducir el hacinamiento existente y responder debidamente a las necesidades fundamentales de todas las personas privadas de libertad, en particular el acceso a la salud, tanto en el ámbito federal como provincial, de conformidad con lo dispuesto en el Pacto y las Reglas Mínimas de las Naciones Unidas para el Tratamiento de los Reclusos (Reglas de Mandela). El Estado parte también debe

considerar una aplicación más amplia de las penas sustitutivas de la prisión, como la vigilancia por medios electrónicos, la libertad condicional y los servicios a la comunidad.

Libertad de expresión

35. El Comité nota con preocupación las recientes reformas en el servicio de comunicaciones audiovisuales que podrían tener el efecto de concentrar la titularidad de los medios de comunicación y afectar negativamente el derecho a la libertad de expresión (art. 19).

36. El Estado parte debe adoptar todas las medidas necesarias y asegurar que su legislación esté plenamente compatible con el artículo 19 del Pacto, con miras a garantizar el pleno y efectivo ejercicio del derecho a la libertad de expresión y la libertad de prensa. En particular, debe revisar las recientes reformas en el servicio de comunicaciones audiovisuales e impedir la concentración de los medios de comunicación de manera que no menoscaben la diversidad de fuentes y opiniones, como determina la Observación general núm. 34 (2011) sobre libertad de opinión y libertad de expresión.

Committee on Enforced Disappearances

Concluding Observations, (12 December 2013), [CED/C/ARG/CO/1](#)

Measures for reparation and for the protection of children from enforced disappearance (arts. 24 and 25)

34. The Committee notes with satisfaction the various laws instituting measures for reparation to victims of human rights violations that occurred during the military dictatorship. Nevertheless, the Committee regrets the fact that the provisions of the laws cover only victims of events that occurred through December 1983 and that there is no analogous legislation for later victims of enforced disappearance. The Committee points out that it is a standing obligation of the State party to provide reparation for the victims and to establish the truth regarding the circumstances of enforced disappearances (art. 24).

35. The Committee encourages the State party to continue its efforts to ensure that its legal system guarantees all victims of enforced disappearance the right to obtain reparation, learn the truth and receive prompt, fair and adequate compensation. The Committee urges the State party to remove the time limit in the legislation referred to in the paragraph above.

36. The Committee notes with concern the absence of systematic statistics on reparations granted to victims, particularly in recent cases of enforced disappearance (art. 24).

37. The Committee recommends that the State party should collect statistics on reparations granted to victims of enforced disappearance, as a tool for improving the reparation measures.

38. The Committee takes note of Act No. 24321, which provides for the possibility of declaring absence by reason of enforced disappearance for persons who disappeared up to 10 December 1983. The Committee regrets the fact that this declaration does not extend to enforced disappearances that occurred since then (art. 24).

39. The Committee recommends that the State party should adopt the necessary measures to recognize the right of families of persons who disappeared since 10 December 1983 to request a declaration of absence by reason of enforced disappearance.

Committee on the Rights of Persons with Disabilities

Concluding Observations, (8 October 2012), [CRPD/C/ARG/CO/1](#)

Equality and non-discrimination (art. 5)

11. The Committee notes with concern that neither the concept of reasonable accommodation nor recognition that the denial of such accommodation is a form of discrimination are explicitly included in anti-discrimination laws or in the laws on, among other things, employment, health and education. It also wishes to express its concern at the lack of simplified judicial and administrative remedies that would allow persons with disabilities to report cases of discrimination on grounds of disability. The Committee is concerned at the lack of information on measures and actions designed to address the specific situations of persons with disabilities who belong to indigenous peoples and of deaf-blind persons.

12. The Committee urges the State party to incorporate the concept of reasonable accommodation into its anti-discrimination legislation and to ensure that the relevant laws and regulations define the denial of reasonable accommodation as a form of discrimination on grounds of disability. The Committee recommends that the State party take steps to simplify existing judicial and administrative remedies in order to enable persons with disabilities to report acts of discrimination to which they have been subjected. The Committee also recommends that the State party devote special attention to the development of policies and programmes for persons with disabilities who belong to indigenous peoples and for deaf-blind persons with a view to putting an end to the many forms of discrimination to which these persons may be subjected.

Women with disabilities (art. 6)

13. The Committee takes note with concern of the unconvincing measures taken by the State party to address the specific needs of women and girls with disabilities, and it regrets the lack of proper protection for their rights (see CEDAW/C/ARG/CO/6, paras. 43 and 44). It is particularly concerned that there is no strategy for mainstreaming gender and disability issues into legislation and programmes focusing on women, including those that deal with violence, access to justice, sexual and reproductive rights, and access to the labour market.

14. The Committee urges the State party to adopt a strategy for guaranteeing full protection and enjoyment of the rights of women and girls with disabilities, while also ensuring their effective participation in decision-making processes. In addition, the Committee recommends that the State party incorporate a disability perspective into all gender-equality policies and programmes, thereby guaranteeing the full and effective participation of women with disabilities on the same footing as other women.

Children with disabilities (art. 7)

15. The Committee notes with concern that Act No. 26.061 on the comprehensive protection of the rights of children and adolescents contains no provisions specifically on children with disabilities. It is also concerned at the lack of information on the situation of children with disabilities in the State party.

16. The Committee recommends that the State party should, as a priority, incorporate a disability perspective into Act No. 26.061 and the system for the comprehensive protection of children's and adolescents' rights. The Committee urges the State party to invest the greatest possible amount of available resources in ending discrimination against children with disabilities and to ensure that they are covered by health insurance schemes and receive the services and benefits, such as pensions and housing, to which they are entitled.

Education (art. 24)

37. The Committee notes that the legal framework regulating education in the State party expressly recognizes the principle of inclusive education (Act No. 26.206, art. 11). However, it is concerned that the implementation of this principle is limited, in practice, by a failure to tailor programmes and curricula to the needs of pupils with disabilities and by the prevalence of all sorts of barriers that prevent persons with disabilities from accessing the educational system without discrimination and on an equal footing with other students. The Committee is deeply concerned about the high number of children with disabilities who attend special schools and about the lack of educational resource centres that support the effective inclusion of students with disabilities.

38. The Committee recommends that the State party develop a comprehensive State education policy that guarantees the right to inclusive education and allocates sufficient budgetary resources to ensure progress towards the establishment of an education system that includes students with disabilities. The Committee also urges the State party to intensify its efforts to ensure that all children with disabilities receive a full compulsory education as established by the State party, while devoting particular attention to indigenous peoples and other rural communities. It likewise urges the State party to take the necessary steps to ensure that pupils with disabilities who attend special schools are enrolled in inclusive schools and to offer reasonable adjustments for students with disabilities within the general education system.

Health (art. 25)

39. The Committee is concerned about the systemic barriers that make it impossible for persons with disabilities to access health services in the State party. These include physical barriers, a dearth of accessible materials, a lack of health-care professionals trained in the human rights model of disability and restrictions on the exercise of legal capacity that exclude persons with disabilities from taking decisions concerning their own treatment.

40. The Committee recommends that the State party develop comprehensive health-care programmes that specifically make provision for persons with disabilities and ensure that they have access to habilitation and rehabilitation health services. It urges the State party to allocate budgetary resources and provide training for health personnel in order to effectively realize the right to health of persons with disabilities, while also ensuring that hospitals and health centres are accessible to persons with disabilities.

41. The Committee regrets that the effective implementation of the National Mental Health Act (Act No. 26.657) is under threat because its implementing regulations have not yet been adopted and because the make-up of its review body has yet to be agreed upon. It also regrets the lack of clear-cut mechanisms for ensuring that persons with disabilities give their free and informed consent for any type of medical treatment before it is administered.

42. The Committee urges the State party to adopt the implementing regulations for the National Mental Health Act (Act No. 26.657) as soon as possible, to establish its review

body, to strengthen the network of community mental health services and to improve coordination between these services and inclusive employment, education and housing mechanisms in order to guarantee the effective implementation of the National Mental Health Act. The Committee also recommends that the State party adopt protocols for ensuring that all persons with disabilities give their free and informed consent for any type of medical treatment before it is administered.

Work and employment (art. 27)

43. The Committee takes note of the labour law that establishes a minimum quota of 4 per cent for the employment of persons with disabilities in the public sector (Act No. 25.689) and of the various employment programmes for persons with disabilities that have been developed within the public sector. However, the Committee notes with concern that there is a lack of the disaggregated data (by, inter alia, sex, age, type of disability and geographic location) needed to assess compliance with this quota at the national and provincial levels. The Committee is also concerned about the cultural barriers and prejudices that hinder persons with disabilities from entering the labour market, particularly in the private sector, despite the existence of tax incentives for employers. It is also disturbed about discrimination against women with disabilities in the realm of employment.

44. The Committee urges the State party to develop a public policy to promote the inclusion of persons with disabilities in the labour market through, for example, the launch of awareness-raising campaigns targeting the private sector and the public at large which are designed to break down cultural barriers and prejudices against persons with disabilities, the implementation of reasonable adjustments in order to ensure that persons with disabilities in need of such adjustments can participate in the labour market, and the development of training and self-employment programmes. The Committee recommends that the State party reinforce its measures for monitoring and certifying compliance with the employment quota for persons with disabilities in the public sector. It also recommends that the State party undertake the systematic collection of disaggregated data as a basis for a proper assessment of compliance with the employment quota at the national and provincial levels.

Adequate standard of living and social protection (art. 28)

45. The Committee notes with concern that provisions in the State party's laws on non-contributory pensions (including the requirement set out in Regulatory Decree No. 432/97 and the eligibility requirement for a welfare pension based on the presence of a disability established in Act No. 18.910) discriminate, either directly or indirectly, against persons with disabilities. The Committee is also concerned about the unequal treatment of migrant workers with disabilities and disabled children of migrant workers in terms of access to social protection measures, such as disability pensions, health care, rehabilitation services and housing.

46. The Committee urges the State party to review its social security legislation and to reformulate the provisions that prevent persons with disabilities, including migrant workers and disabled children of migrant workers, from having equal access to social protection in accordance with article 28 of the Convention.

Committee on Economic, Social and Cultural Rights

Concluding Observations, (12 December 2011), [E/C.12/ARG/CO/3](#)

17. The Committee is concerned about human trafficking in the State party and regrets the inadequacy of law 26.364 on the matter. It is also concerned by the insufficiency of measures for the rehabilitation of victims of trafficking and exploitation (art. 10, para. 3).

The Committee recommends that the State party accelerate the process of revising its legislation on combatting human trafficking to international standards. It also recommends that the State party increase the resource allocations for the prevention of human trafficking, the prosecution and conviction of perpetrators, and the provision of support to victims, as well as for enhancing coordination between at all levels in this respect.

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 universal allowance for children, in particular 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.

Committee on Migrant Workers

Concluding Observations, (2 November 2011), [CMW/C/ARG/CO/1](#)

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.

5. Promotion of sound, equitable, humane and lawful conditions in connection with the international migration of workers and members of their families (arts. 64-71)

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.

III. Special Procedures Mandate Holders

Report of the Special Rapporteur on the rights of indigenous peoples

Addendum: The situation of indigenous peoples in Argentina (4 July 2012)
[A/HRC/21/47/Add.2](#)

Social and economic conditions

105. The Government should take steps to collect more official data on the social and economic situation of indigenous peoples, especially with regard to their health. These statistics are necessary to develop public policies and programmes that respond effectively to the problems still facing indigenous peoples throughout the country.

Education

106. The Special Rapporteur urges the federal and provincial governments to take steps to eliminate the barriers to access to education for indigenous peoples, especially at the higher levels, by, inter alia, building more secondary schools in rural areas and awarding more grants to indigenous students. The Government should pay particular attention to indigenous peoples with lower school attendance rates, especially the Mbyá Guaraní, Pilagá, Toba, Mocoví and Wichí peoples.

107. While the Special Rapporteur notes with satisfaction the substantial legal recognition of the right to bilingual and intercultural education, he is of the view that efforts should be redoubled to give effect to this right and more resources should be allocated for this purpose. In particular, the Government should take steps to train indigenous teachers in bilingual intercultural education and, in consultation with indigenous peoples, should develop more

curricular guidelines and materials for bilingual intercultural education. The Government should also consider providing basic classes taught in indigenous languages, especially in areas where indigenous peoples still use their own languages.

108. The Government should make greater efforts to respond to the structural problems limiting access to education for indigenous women and girls. It should also ensure that indigenous girls staying in school hostels in urban areas are not left vulnerable to discrimination and abuse.

Health

109. The Special Rapporteur acknowledges the generally high level of access to free State health-care services enjoyed by indigenous peoples. At the same time, in order to ensure proper access to these services, it is necessary to extend the opening hours of these services and to increase the number of health-care professionals attending to patients and the supply of medicines in health centres, especially in rural areas.

110. The Government should make concerted efforts to address the structural factors contributing to the health problems suffered by indigenous peoples in the country, including poverty and a lack of access to their traditional lands and natural resources. Measures also need to be taken to combat discrimination against indigenous peoples in health centres and to ensure that those people who use their own language can communicate with and understand medical staff.

Social development

111. The federal and provincial governments should make greater efforts to respond to indigenous peoples' demands for access to basic services in rural areas, especially water supply services. The Government should adopt a long-term vision for the social development of these areas, taking into account the importance of traditional lands to the lives and cultures of indigenous peoples.

112. The development proposals put forward by indigenous peoples themselves to promote the proper management of their natural resources and economic self-sufficiency for their communities should be supported. .

113. The Government should pay particular attention to the situation of the Nivaclé and other peoples living in the border areas of Argentina, with a view to guaranteeing their citizenship in accordance with the relevant laws and international standards and providing them with the necessary health and social services.