

**Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report
- Universal Periodic Review:**

ARGENTINA

I. BACKGROUND AND CURRENT CONDITIONS

Argentina acceded to the *1951 Convention relating to the Status of Refugees* in 1961 and removed the geographical reservation in 1984. In 1967, Argentina also acceded to the *1967 Protocol* (the two instruments are hereinafter jointly referred to as the *1951 Convention*). Furthermore, Argentina acceded to the *1954 Convention relating to the Status of Stateless Persons* in 1972, and has pledged to take steps to accede to the *1961 Convention on the Reduction of Statelessness*.

According to the National Constitution (1994), treaties take precedence over national laws. Certain international human rights instruments and treaties even have constitutional rank and must be interpreted as complementary to the rights and guarantees recognized in the Constitution. The domestic legal framework dealing with asylum-seekers and refugees primarily consists of the Refugee Law No. 26.165 (2006), which establishes a National Refugee Commission (CONARE) in charge of adjudicating asylum claims and finding 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, all of which are in line with international protection standards.

Some 3,360 refugees and 1,222 asylum-seekers from more than 65 countries currently live in Argentina. The great majority of them originate from Latin-American countries, mainly from Peru, Colombia and Cuba, with a growing number of Colombian asylum-seekers. Approximately 34% of the refugees and asylum-seekers are female. Since 2005, Argentina has participated in the UNHCR Regional Solidarity Resettlement Programme. Since then, a growing number of refugees have found protection in the country; 205 Colombian refugees have been resettled in Argentina from Ecuador and Costa Rica as of November 2011.

II. ACHIEVEMENTS

UNHCR welcomes the Government's achievements in the following areas:

1. Adoption of Refugee Law No. 26.165

The Refugee Law (Law No. 26.165), adopted in November 2006, contains important provisions for enhancing refugee protection, and includes issues ranging from refugee status determination (RSD) procedure to finding durable solutions. The regional refugee definition contained in the Cartagena Declaration is incorporated in the law. Law N° 26.165 also established the National

Refugee Commission (CONARE) in charge of adjudicating asylum claims and finding durable solutions for refugees, which was set up in 2009. Although an Assistance and Durable Solutions Sub-Commission was set up within CONARE, the Commission's involvement in local integration of refugees is still at a preliminary stage.

2. Adoption of Migration Law No. 25.871

The Migration Law (Law N° 25.871) incorporates a human rights approach to its migration policy. Decree N° 616/2010, adopted in 2010, regulates the Migration Law and, among other important issues, provides that persons in need of international protection, who are not granted refugee status, may obtain legal residence on humanitarian grounds under the principle of *non-refoulement*. Moreover, it states that people affected by natural disasters, once in Argentine territory, may obtain a transitory residence. In addition, the regulation refers to the right to family reunification. UNHCR's participation in the processes that led to the adoption of Migration Law and Decree N° 616/2010 and which resulted in a strong refugee protection perspective.

3. Adoption of the “Protocol for the protection, assistance and search of durable solutions for unaccompanied or separated children seeking asylum”

In 2011, a “Protocol for the protection, assistance and search of durable solutions for unaccompanied or separated children seeking asylum” (Inter-Agency Operating Standard Procedures) was adopted. The Working Group which had drafted the Protocol had been coordinated by UNHCR and was composed of representatives from the CONARE, UNHCR's implementing partners, migration authorities, the Public Ministry of Defence, representatives from the City of Buenos Aires and the National Ministry of Social Development, UNICEF and IOM. The Protocol reflects important agreements and addresses a range of issues, including the identification, training, appointment of a legal guardian (tutor), referral to the RSD procedure, and granting of complementary forms of protection.

4. Establishment of the Programme for the Assistance and Protection of Refugees and Asylum-Seekers

In 2011, a cooperation agreement was signed between the Ministry of Public Defence, the National Commission for Refugees (CONARE) and UNHCR to ensure legal counselling for refugees and asylum-seekers. Additionally, a “Programme for the Assistance and Protection of Refugees and Asylum-Seekers” was set up within the Ministry of Public Defence. This programme came into effect in February 2012 and provides asylum-seekers and refugees with legal counselling and free of charge legal representation during all stages of the refugee status determination procedure, including at the judicial appeal stage.

5. Adoption of Law No. 26.364, aimed at preventing and punishing human trafficking

In 2008, Argentina enacted the Law No. 26.364 on trafficking in persons, aimed at preventing and punishing human trafficking and assisting and protecting its victims. The law defines the crime of trafficking in persons and spells out the rights of victims.

In line with UNHCR's recommendations, Argentina has recognized the multiple linkages between the protection of refugees and trafficking in persons. Furthermore, CONARE has taken into account UNHCR's Guidelines on Trafficking¹, when assessing individual asylum claims. At

¹ UN High Commissioner for Refugees, *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and*

the same time, CONARE has acknowledged the existing gaps and recognized the need to improve governmental capacity to properly identify victims of trafficking in need of international protection, coordination among key governmental actors, delivery of material assistance, and prosecution of the crime. UNHCR has been supporting CONARE for capacity-building and institutional strengthening in this area.

III. CHALLENGES AND RECOMMENDATIONS

Issue 1: Implementing Domestic Legislation

In spite of the enactment of the refugee law in 2006, Argentina has still not completed the process of adopting the necessary administrative procedures to facilitate the effective implementation of Law No. 26.165 and fill the existing protection gaps. CONARE has been actively working with UNHCR to finalize the draft decree necessary for the implementation of the law.

Recommendation:

- Adopt all the necessary measures and regulations to facilitate the full and effective implementation of the provisions of the 2006 Refugee Law No. 26.165.

Issue 2: Durable Solutions for Unaccompanied or Separated Children

Argentina still needs to adopt the necessary measures for the full implementation of the “2011 Protocol for the protection, assistance and search of durable solutions for unaccompanied or separated children seeking asylum.” In addition, a formal best interest determination procedure for unaccompanied and separated children with international protection needs should also be established.

Recommendations:

- Ensure the full implementation of the “Protocol for the protection, assistance and search of durable solutions for unaccompanied or separated children seeking asylum.” - Adopt a formal best interest determination procedure for unaccompanied and separated children with international protection needs.

Issue 3: Adequate Protection for Trafficking Survivors

UNHCR welcomes the adoption of Law No. 26.364, which penalizes human trafficking, but remains concerned that the law requires women over the age of 18 to prove lack of consent to working in prostitution. The CONARE fully understands the connection between trafficking in persons and international protection and has taken measures to identify potential victims of trafficking. However, the remaining challenge is to establish mechanisms to better identify victims of trafficking in need of international protection. As recommended by many UN bodies², a proper referral system to the RSD procedure should be set up, in order to ensure that the victim’s right to seek and be granted asylum is fully respected. The State party should adopt proper measures, including the development of standard operating procedures, to facilitate their prompt identification and referral to the asylum system, when appropriate. Furthermore,

Persons At Risk of Being Trafficked, 7 April 2006, HCR/GIP/06/07, available at: <http://www.unhcr.org/refworld/docid/443679fa4.html>.

² Committee on the Protection of the Rights of all Migrant Workers and Members of their Families, 15th Session, 2 November 2011, CMW/C/ARG/CO/1, para. 32; Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, 24 May 2011, A/HCR/17/35/Add.4, para. 90, 93, 95 and 96; Committee on the Elimination of Discrimination against Women, 46th Session, 16 August 2010, CEDAW/C/ARG/CO/6, para. 28.

specialized programmes and policies to protect and support victims who cannot return to their countries of origin should be adopted. Finally, measures should be adopted to ensure that refugees, asylum-seekers and other persons of concern to UNHCR, in particular women and girls, do not fall victim to human trafficking or migrant smuggling.

Recommendations:

- Complement Law No. 26.364 by ensuring adequate protection to victims of trafficking in need of international protection through the creation of a mechanism to promptly identify victims and refer those in need of international protection to the asylum procedure.

- Adopt measures to ensure that refugees, asylum-seekers and other persons of concern to UNHCR, in particular women and girls, do not fall victim to human trafficking or migrant smuggling.

Issue 4: Social Assistance for Refugees and Asylum-Seekers

The local integration of refugees and asylum seekers remains a major challenge in Argentina, and therefore, comprehensive public policies need to be elaborated. In the absence of a government assistance programme for local integration, refugees and asylum-seekers, especially those with specific protection needs, are often facing serious difficulties, when trying to integrate locally. Asylum-seekers' access to socio-economic rights is hampered by precarious and temporary documentation, which is often not recognized by employers. Additionally, local integration is restricted when asylum-seekers and refugees, as non-nationals, face administrative obstacles to access the benefits available to nationals in similar situations of social vulnerability. Although policies for State social protection are based on social needs and vulnerability, requirements of long periods of legal residence within the country effectively exclude refugees and asylum-seekers from accessing these benefits.³

It is worth noting that the Committee on Economic, Social and Cultural Rights encouraged the State 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.” Additionally, regarding the universal allowance for children (*Asignación Universal por Hijo*), the Committee called upon the State “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”.⁴

The rights of individuals with mental health problems and/or mental disabilities have been a matter of concern for several UN Treaty Monitoring Bodies⁵. There are several cases of refugees

³ For example, in the case of non-national children or national children with non-national parents, a minimum of 3 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 were included for refugees or stateless persons. Moreover, there are 3 state-run social protection programs designed for specific individuals living in situations of extreme social vulnerability (some elderly without other resources, people with disabilities, and mothers with 7 or more children). However, these programs require extensive periods of “legal residence” in the case of non-nationals beneficiaries (40 years in the case of elderly, 20 years in the case of disability and 15 years in the case of mothers with 7 or more children). There are no exceptions for refugees, asylum-seekers or stateless persons.

⁴ Committee on Economic, Social and Cultural Rights, 47th Session, 14 December 2011, E/C.12/ARG/CO/3, para. 15 and 20.

⁵ Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Concluding Observations on Argentina, CRC/C/OPAC/ARG/CO/1, 11 June 2010 paras. 17-18; Human Rights Committee, Concluding observations on Argentina, CCPR/C/ARG/CO/4, 31 March 2010, para. 24.

and asylum-seekers hospitalized in mental institutions as “social patients”, because they do not have other alternatives - neither family links nor social networks in the country - to help them develop their lives outside these institutions. Thus, having arrived in Argentina seeking international protection as refugees - at times mentally traumatized as a consequence of persecution and other violations of human rights suffered in their countries of origin - they are confronted with further hardship and abandonment.

Recommendations:

- Design a comprehensive public programme or social policy to ensure proper social assistance for asylum-seekers and durable solutions for refugees (particularly to those in situations of extreme social vulnerability), or otherwise ensure effective access in a non-discriminatory manner to social programmes, to facilitate their process of socio-economic integration.
- Adopt the necessary measures to ensure protection and assistance of refugees and asylum-seekers with mental health problems or disabilities, including those hospitalized in mental institutions.

Issue 5: Sexual and Gender-Based Violence

Violence against women frequently affects women and girls of concern to UNHCR. In addition to public policies to prevent and respond to violence against women, measures should be taken to ensure that all gender-based asylum claims are appropriately analysed by the competent authorities, taking into account relevant country of origin information. UNHCR also proposes the development of specific Standard Operating Procedures for Prevention and Response to Sexual Gender Based Violence among asylum-seekers and refugees. Such procedures would help to identify the relevant actors and their responsibilities and ensure a coordinated and timely approach to SGBV cases of violence affecting asylum-seekers and refugees. In this sense, it is worth noting that the Committee on the Elimination of Discrimination Against Women has encouraged 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.”⁶

Recommendations:

- Implement comprehensive public policies aimed at preventing and responding to sexual and gender-based violence (SGBV).
- Take measures to ensure that all asylum claims based on SGBV are appropriately analyzed by the competent authorities, taking into account relevant country of origin information.
- Develop Standard Operating Procedures for Prevention and Response to SGBV among asylum-seekers and refugees.

Issue 6: Statelessness

UNHCR welcomes Argentina’s pledge at the Ministerial Meeting in December 2011 to take steps to accede to the *1961 Convention on the Reduction of Statelessness*. Accession to this Convention is recommended as a general step to strengthen the international legal framework applicable to Argentina. This instrument establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth. This treaty is therefore complementary to standards contained in other human rights treaties. An increase in the

⁶ Committee on the Elimination of Discrimination Against Women, 46th Session, 16 August 2010, CEDAW/C/ARG/CO/6, para. 46.

number of States parties is essential to strengthening international efforts to prevent and reduce statelessness.

Although Argentina has acceded to the *1954 Convention relating to the Status of Stateless Persons*, it does not yet have a statelessness determination procedure in place and, as a consequence, an undetermined number of stateless persons remain without the protection to which they are entitled under the terms of the 1954 Convention.

Recommendations:

- Accede to the *1961 Convention on the Reduction of Statelessness*.
- Implement a statelessness status determination procedure to ensure the protection of stateless persons under the terms of the *1954 Convention relating to the Status of Stateless Persons*.

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