



Input provided by the United Nations High Commissioner for Refugees

into the

**Office of the High Commissioner for Human Rights'
Compilation and Stakeholders reports**

for the Universal Periodic Review of

ARGENTINA

I. Background Information

As general background information, we would like to note that:

Argentina acceded to the 1951 Convention Relating to the Status of Refugees (“1951 Convention”) in 1961 and to the 1967 Protocol in 1967 and removed the geographical limitation to the application of the 1951 Convention in 1984. The country has acceded to most of the universal and regional instruments on human rights. According to the National Constitution from 1994, treaties take precedence over national laws and certain international instruments and treaties (e.g. the Universal Declaration of Human Rights, the American Convention on Human Rights and the Convention on the Rights of the Child) have constitutional rank and must be interpreted as complementary to the rights and guarantees recognized in the Constitution. Additionally, self-executing provisions in treaties to which Argentina is a party are directly applicable.

The domestic legal framework dealing with refugee matters is set out in the new refugee law 26.165 from 2006, which establishes a National Refugee Commission (CONARE) responsible for adjudicating asylum claims and finding durable solutions for refugees. The refugee law is complemented by a number of decrees and administrative regulations, which adhere to the minimum international protection standards and deal with specific issues such as residence permits, documentation and extradition.

The new refugee law enshrines important provisions ranging from those related to the RSD procedure to those involving local integration and the search of durable solutions for refugees, such as resettlement. The regional refugee definition (Cartagena Declaration) is foreseen in the law. As a consequence, most persons in need of international protection may obtain protection under the classic or broader definition of refugee.

According to UNHCR’s figures (September 2006) 3,240 refugees and 1,021 asylum-seekers from more than 60 countries currently reside in Argentina, bringing the total number of persons of concern to UNHCR in the country to 4,261. The majority of refugees and asylum-seekers come from Latin-American countries, mainly Peru and Cuba, with a growing number also coming from Colombia. By September 2007, approximately 300 refugees and asylum-

seekers from Colombia were living in Argentina, 67 of whom had been resettled from Ecuador and Costa Rica.

II. Information on Positive Aspects

Issue 1: The major political commitment demonstrated by Argentina and the efforts made by the country and the concrete results it has achieved in its implementation of the *Mexico Plan of Action (2004)*.

In UNHCR's view, Argentina is one of the Latin-American countries in which the Mexico Plan of Action has led to concrete results and has had a positive impact on refugee protection since its adoption in 2004. For example, Argentina has adopted a refugee law, joined the UNHCR Regional Resettlement Programme, and further developed the existing Refugee Status Determination (RSD) procedure. Moreover, a number of local governments, such as the cities of Buenos Aires and Rosario, have signed "Solidarity Cities Agreements" and facilitated the local integration of refugees. Furthermore, the national and local protection networks have been consolidated.

Issue 2: The enactment of a refugee law in 2006 as well as the participation of Argentina in the UNHCR Regional Solidarity Resettlement Programme over the past three years.

The new **refugee law** enshrines important protection principles, ranging from those relating to the RSD procedure to those concerning the search for durable solutions for refugees, including local integration and resettlement. The law includes both the 1951 Convention refugee definition as well as the broader definition of who is a refugee set out in the 1984 Cartagena Declaration. Consequently, most persons in need of international protection may obtain it either as refugees under the 1951 Convention or under the broader refugee definition.

The refugee law guarantees important principles such as protection against *non-refoulement*, no sanctions for illegal entry into the country, confidentiality, family unity, and non-discrimination. The law also establishes a National Refugee Commission (*Comisión Nacional del Refugiado* – CONARE) which is composed of five different Ministries, one member of a non-government organization and a UNHCR representative (the latter two with voice but no vote). Pursuant to the law, CONARE has acquired new competencies. As a result, it will not only be involved in RSD procedures but also in the design of public policies concerning asylum seekers and refugees.

Concerning **resettlement**, following the signing of a Framework Agreement between UNHCR and Argentina and the designing and implementation of a resettlement programme, a growing number of refugees are able to find protection and a durable solution in Argentina.

During the meeting of UNHCR's Executive Committee in October 2007, Argentina announced its intention to consolidate and further develop the resettlement programme in order to be able to receive larger numbers of refugees and to enable the country to better contemplate the different needs of refugees.

Issue 3: The adoption of a migration law in 2003 and the implementation of a public policy, which: 1) recognizes the right to migrate and guarantees equal access to the public health and education system to all migrants regardless of their migratory status; 2) multiplies the possibilities for migrants and persons of concern to UNHCR from MERCOSUR's countries

to be granted a temporary and/or permanent right of legal residence in the country.

The new migration law and policies address refugee related matters and Argentina has been very supportive of UNHCR in regional migration fora (e.g. MERCOSUR, Ibero-American Summit, etc.).

Through the adoption of the new migration law in 2003 and the implementation of the so-called *Patria Grande Programme*, Argentina recognizes the right to migrate and guarantees equal access to the public health and education system to all migrants regardless of their migratory status. This Programme has also multiplied the possibilities for persons of concern to UNHCR to obtain a temporary and/or permanent legal resident permit in the country.

With UNHCR's support, Argentina should continue implementing all the measures necessary to ensure that asylum-seekers have access to the territory and to the RSD procedure through the implementation of training activities for migration and law enforcement officials, especially at borders, and through strengthening the monitoring and response capacities of protection networks.

III. Information on Suggested Recommendations

Issue 4: Adopt the necessary internal regulations to facilitate the effective implementation of the new refugee law and, with UNHCR's support, continue providing training on refugee protection principles and standards to relevant governmental officials/agencies, especially those working at border areas.

In order to give full effect to the provisions in the new refugee law, and, consequently, to enable its full and effective implementation, it is necessary for Argentina to enact an Executive Decree. UNHCR is supporting Argentina in this endeavour.

Furthermore, UNHCR will continue offering its technical support and assistance to Argentina, particularly in the area of capacity-building and training on refugee protection principles and standards for relevant governmental officials/agencies, especially those working at border areas.

Issue 5: With UNHCR's support, design a comprehensive public programme in order to ensure that new asylum-seekers receive material assistance and that recognized refugees can attain a durable solution.

In follow-up to the adoption of the refugee law, a comprehensive public programme needs to be designed in order to ensure that new asylum-seekers receive material assistance and that recognized refugees are able to attain a durable solution. UNHCR stands ready to offer its support to the Argentinean authorities.

Under the refugee law, CONARE has been assigned new competencies; the law thus provides a framework according to which Argentina can progressively assume a major role in assisting refugees and asylum-seekers in the local integration process.

Issue 6: Ensure that the RSD procedure is age and gender-sensitive and adapted to accommodate the specific needs of asylum-seekers at heightened risk, in particular unaccompanied and separated children,

women and victims of torture, and establish a procedure for determining the best interests of unaccompanied and separated asylum-seeking and refugee children.

Argentina is party to the 1989 Convention on the Rights of the Child, which has constitutional rank pursuant to article 75.22 of the National Constitution. Although the new refugee law does not contain specific provisions concerning the treatment and handling of unaccompanied children seeking asylum (e.g. identification, registration, documentation, etc.), it does guarantee to these children, without discrimination (e.g. on the basis of legal status or nationality), the same rights and benefits which are accorded to all children under Argentine jurisdiction.

Specifically the new refugee law foresees that *“In the case of women or minors, especially if they are on their own, who have been the victims of violent behaviour, the Committee shall try to supply the specialized psychological assistance of the same, and during the proceeding, UNHCR advice appearing on the Guides for the protection of refugee women and the instructions on persecution for reasons of gender shall be taken into account. In the case of minors, the instructions concerning their protection and care shall be taken into account, informing the agencies with basic responsibility for policies oriented to vulnerable groups, in order to obtain an effective and prompt solution, which results in adequate contention to said persons”*.

In spite of this, however, and pending the adoption of implementing regulations (see Issue 4 above), there remain gaps in the protection of unaccompanied and separated children. For example, a procedure for determining the best interests of a child has not been established. Furthermore, tracing of family members is not being conducted, and adequate care and accommodation arrangements are not always available.

The *Defensoría General de la Nación*, a governmental agency in charge of the legal representation of minors in the country, has thus recently created a Refugee Programme to start addressing some of these issues.

The recent approval of the refugee law, the consolidation of the resettlement programme, and the recent creation of a Refugee Programme within the Defensoría all clearly shows that the Argentine authorities have the necessary will to address, with UNHCR support, the existing protection gaps.

Issue 7: Ensure that the law on trafficking in persons, which is in the process of being adopted, contains safeguards to ensure that victims of trafficking who may be in need of international protection are referred to the RSD procedure and afforded the requisite protection and assistance.

Argentina is in the process of adopting a law on trafficking in persons. Considering the specific protection needs of victims of trafficking who may not be able to return to their home countries, as well as their right to seek and enjoy asylum from persecution, it is important for Argentina to seek UNHCR's legal advice concerning the protection safeguards that need to be incorporated into the draft law on trafficking in persons.