



# ARGENTINA

SUBMISSION TO THE UNITED NATIONS COMMITTEE ON THE  
PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND  
MEMBERS OF THEIR FAMILIES

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AMNESTY  
INTERNATIONAL



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# 1. INTRODUCTION

Amnesty International submits this report to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereafter referred to as the Committee on Migrant Workers or the Committee) in advance of the review of Argentina's second periodic report on the implementation of the Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.

Having previously been a country recognized by regional and international bodies as a role model in terms of immigration policy, the concerns set out in the following sections describe regressive measures that the state party has adopted, through regulations and practices, to restrict the rights of migrants and allow discrimination and xenophobia against this population.

At the end of each section, we outline a set of recommendations to Argentina in order to improve the protection of rights of migrant workers and their families in the country.

## 2. REGULATORY CHANGES AND REGRESSIVE POLICY MEASURES ON MIGRATION (ARTICLES 7, 22, 28, 30)

### 2.1 THE EXECUTIVE ORDER 70/2017

As the Committee may be aware, in the past recent years Argentina has made a shift in its migration policy. Through changes in regulations and practices, the State has introduced measures that affect the rights of migrants and their families and allow discrimination and xenophobia.

In January 2017, President Macri issued Executive Order number 70/2017 (hereinafter "DNU 70/2017")<sup>1</sup> whereby core aspects of Migration Act number 25,871 were modified. It is important to recall that the Migration Act number 25,871, enacted in 2004 and regulated in 2010, was adopted after many years of struggle demanding that Argentina have a democratic regulatory framework for migrants. The Migration Act recognizes migration as a human right and guarantees equal access to a set of basic rights to all migrants. It was described as a significant progress in human rights by international organizations and cited as a model for the region and the world<sup>2</sup>.

The changes introduced by the DNU 70/2017 particularly target migrants with irregular status and/or criminal records, including misdemeanours or when records are extinct. Among other reforms, the DNU 70/2017 accelerates deportation procedures, introduces new barriers to the admission of migrants and their permission to stay, limitations to the possibility of access to free legal counselling, extension of terms and conditions of detention due to administrative reasons, reduction of procedural guarantees in deportation

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<sup>1</sup> DNU 70/2017, available at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/270000-274999/271245/norma.htm>

<sup>2</sup> Concluding observations of the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, CMW/C/ARG/CO/1, September 2011; Concluding observations of the UN Committee on Economic, Social and Cultural Rights, E/C.12/ARG/CO/3, December 2011; Concluding observations of the Committee on the Elimination of Racial Discrimination, CERD/C/ARG/CO/19-20, March 2010; Conclusions and recommendations of the Committee against Torture on the fourth periodic report of Argentina, CAT/C/CR/33/1, November 2004; UNHCR Press Release, May 2010, available at <http://www.acnur.org/noticias/noticia/argentina-se-reglamento-la-ley-nacional-de-migraciones/>. Also, at regional level, it was recognized by the Inter-American Commission of Human Rights, OEA/Ser.LV/II. Doc. 45/13, December 2013, available at [http://www.oas.org/es/cidh/soluciones\\_amistosas/docs/Informe-Soluciones-Amistosas.pdf](http://www.oas.org/es/cidh/soluciones_amistosas/docs/Informe-Soluciones-Amistosas.pdf), and used as a model by Uruguay (2008), Bolivia (2013), Ecuador (2017) and Peru (2017) in drafting their own immigration policies and used as a guide for immigration reforms in Brazil and Chile.

processes and violation of the right of defence. In parallel, changes were made to the reunification criterion as a condition to avoid deportation, curtailing the right to family unity.

The cases in which migrants can be excluded from entry or deported were expanded by the DNU 70/2017<sup>3</sup>. Originally, the Migration Act established that migrants with final convictions for serious crimes that amounted to three years of custody could be subject to exclusion from entry or deportation. With the adoption of the DNU 70/2017, exclusions and deportations now extend to migrants with any custodial criminal record, no matter how many years of conviction the crime amounts to. Additionally, it allows for the deportation of migrants whose convictions are not final, violating the principle of presumption of innocence.

The deportation procedure introduced by the DNU 70/2017 shortens the timeframe and can be applied to any foreigner without properly taking into consideration his/her particular circumstance. Under this new procedure, whether the person has family or roots in the country does not prevent the National Migration Office from carrying out the deportations<sup>4</sup>. Once the deportation order is issued, the new timeframe gives the person only three days to challenge the administrative decision, and, if this challenge is rejected, only three more days to dispute the rejection in court. The reduction of the timeframe –which was originally of fifteen days– directly impacts on the capacity of migrants to exercise their right to appeal. In addition, the State has now no obligation to provide free legal aid. Instead, the person has to ask for a public defense lawyer and must prove the lack of economic means –all of that within the three-day timeframe.

The DNU 70/2017 also removed the guarantee that the Migration Act had introduced allowing administrative decisions to be subject to review when there had been errors, omissions or manifest arbitrariness, violations to due process or when new solid facts justified the revision<sup>5</sup>.

The way in which this ruling was introduced was also problematic, leading to the DNU 70/2017 being deemed unconstitutional in March 2017<sup>6</sup>. The Executive challenged this decision and since 2018 the case awaits consideration by the National Supreme Court. Meanwhile, the DNU 70/2017 is still being applied and continues to reinforce a false paradigm that links migration to crime. Since the adoption of the DNU, deportation procedures have alarmed increased<sup>7</sup> while programs dedicated to facilitating the regularization of migrants have been cancelled<sup>8</sup> and a complex new digital system combined with expensive fees are creating many barriers for the access to regularization<sup>9</sup>.

Against this background, various international bodies have criticized or expressed concern regarding the DNU 70/2017 due to the negative implications it has on the human rights of migrants. The Committee for the Elimination of Racial Discrimination (CERD) stressed the importance of not introducing practices and rules that entail a regression in the current regulatory framework<sup>10</sup>. The Committee on the Rights of the Child (CRC) expressed deep concern for the continued application of the DNU 70/2017, despite it being deemed unconstitutional, and highlighted the potential negative impact on family unity and the best interest of the children<sup>11</sup>. The Committee Against Torture (CAT) urged the State to repeal the DNU 70/2017 and make sure that persons subject to deportation may be granted enough time to challenge the decision and be given access to immediate free legal aid<sup>12</sup>. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance joined the concerns and warned against a possible

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<sup>3</sup> DNU 70/2017, art. 4.

<sup>4</sup> Please refer to section 2.3 – Family Separation for more information.

<sup>5</sup> Migration Act 25,871, art. 9.

<sup>6</sup> The judges of the Court of Claims ("Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal") understood in their decision issued on March 23<sup>rd</sup>, 2018 that the DNU 70/2017 "not only entails an appropriation of the legislative powers without any constitutional base to legitimise it, but it also includes in its provisions some provisions which are incompatible with the constitutional and human rights standards. Additionally, they stated that the requirements of need and urgency (reflecting the official name of the DNU in Spanish "Decreto de Necesidad y Urgencia"), which justify that the Executive Power assumes the powers of Congress, were not present. The judges also consider that the reforms introduced by the DNU 70/2017 violate the guarantees of the due process and the right of defence of migrants.

<sup>7</sup> Upon a request by the National University of Lanús to access information, the National Migrations Office reported that 1,908 deportation orders were issued in 2015, against 4,026 in September 2018. In turn, effective removals totaled 26 in 2014 and 2015, whereas they soared to 258 from 2016 to October 2018.

<sup>8</sup> In the last couple of years, the State suspended an important regularization program that had a territorial outreach and was intended to facilitate the regularization of migrants living outside urban centers. At the same time, there has been a significant increase in the number of staying control operations. Only in 2018, 27,475 of these operations were run -almost four times the number of operations run in 2014. See: [http://www.migraciones.gov.ar/pdf/estadisticas/operativos\\_control\\_permanencia\\_2018.pdf](http://www.migraciones.gov.ar/pdf/estadisticas/operativos_control_permanencia_2018.pdf)

<sup>9</sup> Please refer to section 3 (Barriers to Regularization) for more information.

<sup>10</sup> CERD/C/ARG/CO/21-23, para. 34(a), available at

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fARG%2fCO%2f21-23&Lang=es](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fARG%2fCO%2f21-23&Lang=es)

<sup>11</sup> CRC/C/ARG/CO/5-6, para. 39, available at

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fARG%2fCO%2f5-6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fARG%2fCO%2f5-6&Lang=en).

<sup>12</sup> CAT/C/ARG/CO/5--6, para. 34 b), available at

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fARG%2fCO%2f5-%2fAD%2fE2%80%906&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fARG%2fCO%2f5-%2fAD%2fE2%80%906&Lang=en)

increase in criminalization and stigmatization of migrants as a consequence of the DNU 70/2017<sup>13</sup>. At regional level, the Inter-American Commission of Human Rights and the Rapporteurship on the Rights of Migrants of the Inter-American Commission on Human Rights both expressed deep distress over the regressive measures that the State is implementing<sup>14</sup>.

With the adoption of the DNU 70/2017, the government not only modified the Migration Act model framework in a regressive manner, but also in a unilateral way without it being subject to Congress consideration. Amnesty International believes that it is crucial for the Committee to address this issue and recommend the State to repeal DNU 70/2017, that is affecting the human rights of migrants and their families protected under national and international law.

## 2.2 REGRESSIVE REGULATIONS AT PROVINCIAL LEVEL

At provincial level, new legislation has been approved which restricts even further the rights of migrants. In the province of Chubut, the Governor signed an executive order that provides for prohibition of admission and expulsion of all migrants with criminal records<sup>15</sup>. In the province of Jujuy, a law has been created establishing a mechanism to charge migrants for health services while they reside there temporarily<sup>16</sup>. In the province of Misiones, a local Decree issued in 2000 demands foreigners with irregular migration status to pay for health care in public hospitals. This regulation had apparently fallen into disuse after the Migration Act was adopted, but local authorities admitted that it is being applied<sup>17</sup>.

Apart from ignoring the provinces' lack of competence to legislate in matters that fall within the remit of the National Congress, these legislative measures go against precepts set forth in the Migration Act, the National Constitution and disregard the Argentine Federal System<sup>18</sup>. The National Constitution defines Argentina as a democratic and pluralistic society, with a focus on the full respect of human rights and its pillars include the equal enjoyment of rights for all inhabitants whether Argentine or foreign.

These regulatory changes occur in a context of enormous backsliding on the migratory policies that are being implemented in the country and that restrict migrants' rights, such as the DNU 70/2017. These decisions are frequently based on false or distorted information that seeks to associate migration with criminality (e.g. DNU 70/2017 and Chubut decree) and supported by discriminatory declarations of public officials and legislators<sup>19</sup>.

## 2.3 FAMILY SEPARATION

Forced situations of family separation can lead to serious violations of the rights to family unity, identity, and personal integrity. These effects become more pressing and therefore more urgent to prevent and remedy in the case of children, where the damage caused by separation can become irreparable. As a result, the international duty of the States to grant special protection to children is especially relevant.

In spite of this, the DNU 70/2017 introduced a restriction to the family unity criterion that, as an exemption, may allow a person to remain in the country despite having a deportation order issued against him/her<sup>20</sup>. With this a, family unit has become an exception to deportation orders at the sole discretion of the National Migrations Office. This decision can -and should- be revised by the Judiciary when appealed by migrants. However, in many cases of appealed deportation orders involving family separation documented by Amnesty International and other local organizations (see Appendix), the Judiciary has limited itself to confirm the National Migration Office's discretion to decide whether or not to apply the family unit criterion as an exemption to deportation.

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<sup>13</sup> A/HRC/35/41/Add.1, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/093/24/PDF/G1709324.pdf?OpenElement>

<sup>14</sup> <http://www.oas.org/es/cidh/sesiones/docs/Calendario---161---audiencias---es.pdf>

<http://www.lanacion.com.ar/1997618---la---cidh---considero---que---el---decreto---migratorio---de---macri---es---una---regresion>

<sup>15</sup> See: [https://www.juschubut.gov.ar/images/centro-juris/jurisletter/pdf/DECRETO\\_136\\_2019.pdf](https://www.juschubut.gov.ar/images/centro-juris/jurisletter/pdf/DECRETO_136_2019.pdf)

<sup>16</sup> Law number 6.116 creates a new provincial health system for foreigners. Available at:

<http://www.justiciajujuy.gov.ar:9090/iah/legpro/6116.pdf>

<sup>17</sup> See: <http://misionesdiario.com.ar/index.php/zocalo/17279-en-misiones-desde-el-2000-se-cobra-consulta-a-pacientes-extranjeros-sin-riesgo-de-vida>

<sup>18</sup> National Constitution, art. 20.

<sup>19</sup> For more information on this issue, please refer to section 2.4 (Discriminatory and Xenophobic Rhetoric) .

<sup>20</sup> DNU 70/2017, art. 29, para 3.

In this regard, the Committee on the Rights of the Child has recently taken a stance on how the regulatory changes introduced can impact on family unity and the best interest of the children:

“The Committee is concerned about the continued application of the DNU 70/2017, despite it being deemed unconstitutional, and its potential negative impact on family unity and the best interests of migrant children. The Committee urges the State party to repeal DNU 70/2017 in order to ensure that, in migration cases, the right of a child to have his or her best interests taken as a primary consideration is upheld, while family unity is preserved.”<sup>21</sup>

By curtailing the analysis of the rights to family unity and reunification to the exclusive and discretionary evaluation of the Executive branch, the State is violating its obligations to comprehensively assess each situation on a case-by-case basis and with due consideration of the rights and interests at stake. The cases described in the Appendix are not extensive, but are dramatic examples that serve to illustrate how the State’s shift in its migration policy is separating families and causing irreversible harm on children.

## 2.4 DISCRIMINATORY AND XENOPHOBIC RHETORIC

Since the adoption of DNU 70/2017, biased information has been constantly used to wrongly associate migration to crime and insecurity<sup>22</sup>. The official declarations underpinning the decree is that it is part of a wider national security policy aimed to target migrants that have criminal records with particular attention to drug trafficking. However, the scope and impact of the reforms go beyond this objective.

The DNU 70/2017 and the local restrictive regulations referred to in the previous section have an impact on all migrants, specifically those at increased risk of suffering human rights violations.

These concrete, regressive measures are accompanied by xenophobic public declarations of government authorities and legislators, as well as communication strategies from public officials and mass media that stigmatize migrants and intend to link them with crime and insecurity, increasing the persecution against this population.

In this vein, President Macri has affirmed “because of lack of action we cannot allow crime to choose Argentina as a place to come to commit crimes”<sup>23</sup>. Security Minister Bullrich has gone so far as to publicly argue in a generalized and discriminatory manner that migrants from Bolivia, Peru and Paraguay are linked to drugs and drug trafficking. She stated that “the concentration of foreigners that commit crimes related to drug trafficking is the main concern of the country and what we want to target”<sup>24</sup> and further assured that “20% of the detained population are foreigners” even though this number was biased and distorted to justify the passing of controverted legislation such as the DNU 70/2017.

Likewise, Congressman and vice-president candidate to President Macri in the coming elections, Mr. Pichetto, has associated migration with crime in several public declarations, defending the reciprocity argument and stating that Argentina serves as “social adjustment to Bolivia and crime adjustment to Peru” and that “Peru has solved its drug trafficking scheme by transferring it (to Argentina)”. He further argued that Argentina is “incorporating the leftovers where we have no migration control”<sup>25</sup>.

The criminalization and stigmatization rhetoric that the government is installing and translating into legislation and practices is extremely dangerous as it can encourage xenophobic episodes towards the migrant population. Amnesty International believes that the Committee should alert the State about the threat that these discriminative measures and actions pose on migrants. Conceiving migrants as a threat to national security as the government is doing can lead to very dramatic consequences.

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<sup>21</sup> CRC/C/ARG/CO/5-6 para 39. Available at

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FARG%2FCO%2F5-6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FARG%2FCO%2F5-6&Lang=en).

<sup>22</sup> The State used biased data to justify the adoption of DNU 70/2017. The DNU 70/2017 affirms that while the total number of detained foreigners represents a 6% of the detained population, in crimes related to drugs the percentage climbs to 33%. However, the State omitted the fact that the first number amounts to the total population confined, while the second one refers only to the Federal Criminal System. Amnesty International and other civil society organizations have published solid and verified information that refutes these figure. It is incorrect to generalize and link migration to crime given that less than 1% of migrants have had conflicts with the criminal system. The percentage of foreigners that are imprisoned in the past 15 years (2002-2017) has remained stable, ranging between 4,9% and 6% of the total population confined in federal and provincial prisons.

<sup>23</sup> See: [https://www.clarin.com/politica/macri-favor-controles-migratorios-necesitamos-saber\\_0\\_r1BqbnlUx.html](https://www.clarin.com/politica/macri-favor-controles-migratorios-necesitamos-saber_0_r1BqbnlUx.html)

<sup>24</sup> See: [https://www.clarin.com/politica/patricia-bullrich-extranjeros-detenido-congreso-probable-expulsados-pais\\_0\\_tNFCCLlEM.html](https://www.clarin.com/politica/patricia-bullrich-extranjeros-detenido-congreso-probable-expulsados-pais_0_tNFCCLlEM.html)

<sup>25</sup> See: <https://www.lanacion.com.ar/politica/las-polemicas-declaraciones-de-miguel-pichetto-sobre-los-inmigrantes-nid1952583>; <https://www.perfil.com/noticias/politica/pichetto-polemico-fuertes-declaraciones.phtml>

## 2.5 RACIAL DISCRIMINATION AGAINST MIGRANTS

As noted by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Argentina in 2016, discriminatory practices intersect with poverty and are affecting minority groups more severely, including afro-Argentines and migrants from African descent<sup>26</sup>. These minorities are suffering harassment and violence by the police and widespread horizontal stigmatization with total absence of mechanisms of protection accessible to them.

Amnesty International and other local human rights organizations have documented many violent police operations in the City of Buenos Aires that are based on racial profiling to target migrants, especially Senegalese street vendors. These groups are reportedly targeted for misdemeanors such as resisting arrest or violation of the trademark law, subjected to police violence, arbitrary detention and confiscation of goods<sup>27</sup>.

The UN Working Group of Experts on People of African Descent, on its recent fact-finding visit to Argentina, expressed deep concern for the long-standing invisibility and the persistent structural discrimination against Afro-Argentines, people of African descent and Africans. With regards to the violent behavior of law-enforcement agencies, the Working Group claimed that “Excessive policing of street vendors of African descent must come to an end” and recommended the State to undertake “an in-depth independent investigation into police action targeting street vendors in the city of Buenos Aires to monitor and identify perpetrators of racial discrimination, violence and theft of goods, develop remedies and combat impunity”<sup>28</sup>.

### Recommendations:

- Repel DNU 70/2017 in line with the recommendations put forward by several UN Treaty Bodies.
- Refrain from carrying on deportations after a process that does not afford guarantees, effective right to a defense and appeal, and equal access to justice.
- Ensure that the Judiciary exercises its power of review on a case-by case basis and with due consideration of the human rights at stake.
- Refrain from introducing new bills or regulatory changes that are regressive of the rights guaranteed in the Migration Act 25,871 and ensure all migrants have equal access to social rights.
- Ensure that family unity and children’s rights are preserved in all cases and under every circumstance, and that the principle of the best interest of the child is given primary consideration.
- Refrain from carrying on deportations that separate families and are not in line with the principle of the best interest of the child. The family reunification criterion should not be a discretionary and privative power of the National Migrations Office.
- Lift the re-entry bans and guarantee the return to the country in conditions of safety in all cases where the deportation process violated the human rights of migrants and their families. (See Appendix for context).
- Refrain from carrying on deportations that violate the rights of migrants guaranteed under national and international legislation, particularly the rights to a due process, right to defense, right to appeal, access to justice, right to family unity and full respect of children’s rights.
- Stop the criminalization and stigmatization of migrants that, through discourse and practices, encourages discrimination and xenophobia.
- Make sure that minority groups affected by discriminatory practices have effective access to the necessary protection mechanisms.

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<sup>26</sup> A/HRC/35/41/Add.1, para. 27, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/093/24/PDF/G1709324.pdf?OpenElement>

<sup>27</sup> On June 2017, during his report to the HRC on his mission to Argentina, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance expressed concern regarding the increase in racial profiling as well as about the escalation of violence against African migrants, many of them in irregular situation and vulnerable to discrimination and exploitation (A/HRC/35/41/Add.1, Par.54-56, 73-75). On June 19th 2018, Amnesty international and dozens human rights and migrant organizations in Argentina signed a joint statement expressing concern about the discrimination and violent repressions suffered by the Senegalese community in Buenos Aires. Available at (only Spanish): <https://amnistia.org.ar/18154-2/>

<sup>28</sup> Statement to the media by the United Nations Working Group of Experts on People of African Descent, on the conclusion of its official visit to Argentina, 11-18 March 2019, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24350&LangID=E>

- Stop the persistent racial discrimination against vendors of African descent and end excessive policing control of street vendors.

### 3. BARRIERS TO REGULARISATION (ARTICLE 69)

Although there has been significant advance in the regularization of migrants since the adoption of the Migration Act, the government has introduced a number of new barriers that greatly hinder this process, the promotion of which constitutes an obligation for the State under national law<sup>29</sup>. Among these barriers: it has expanded the requirement to prove criminal records going back ten years, the regularization fees increased 1000%, a territorial outreach program to facilitate regularization was closed, and a new and complex digital system known as Ra.D.Ex has been created.

The Ra.D.Ex is a new mandatory online system for the regularization of migrants that was introduced under the premise of accelerating the regularization processes, whereby every request for regularization has to be done online. It was launched in 2018 without prior consultation or participation of neither civil society nor migrants, thus bringing about many critics from both groups. Although this new scheme could have meant modernization and greater diligence, it is in fact a complex system that requires that migrants have access to the Internet and to a computer or electronic device and be very familiar with the legal and computer language. Therefore, people that have difficulties in accessing digital technology or low-income people suffer from exclusion.

Additionally, the regularization fees have increased considerably in the last two years. In 2016, they increased between 200% and 600% and in 2018 they scaled up another 200%<sup>30</sup>. Also, fines linked to irregular migration status have become more pressing in amount and occurrence. Under this new system, the economic situation of a person seems to be determinant in granting access to regularization.

Furthermore, the National Migration Office does not provide migrants with electronic devices in their offices nor does provide in-person assistance to help migrants throughout the online regularization process. Migrants who do not have the necessary resources to cover the high regularization fees have to initiate the process in person at the National Migration Office, but very few staff and resources have been dedicated to assist this group. As a result, endless queues are formed every day with only 40 cases being treated every day. Once again, socially- and economically disadvantaged migrants are most affected.

#### Recommendations:

- Make the necessary adjustments to the regularization mechanisms so that it is effective and non-discriminatory.
- Allocate enough resources to provide effective in-person assistance to migrants throughout the regularization process in view of achieving greater efficiency in processing requests.

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<sup>29</sup> Migration Act, art. 17 provides that the State has an obligation to promote the regularization of migrants in Argentina.

<sup>30</sup> [http://www.migraciones.gov.ar/pdf\\_varios/tasas/cuadro\\_tarifario.pdf](http://www.migraciones.gov.ar/pdf_varios/tasas/cuadro_tarifario.pdf)

## 4. APPENDIX: CASES

### VANESSA GÓMEZ CUEVA

Vanessa was born in Peru and has lived in Argentina since 2003 with all her family. She was detained in 2011 and sentenced in 2013 to four years in prison for drug trafficking in an expedited trial. Vanessa served her sentence and, after regaining freedom in 2014, she pursued and completed satisfactorily a Higher Education Certification in Nursing, in addition to taking several specialisation courses in this field. As a single mother of three Argentine children, Vanessa reorganised her life focusing on raising her children, and drawing on what she learned, she worked as an older adult caregiver.

In 2015, when Vanessa attempted to renew her identification documents, the National Migrations Office initiated an *ex officio* proceeding and decided to deport her from the country because of her criminal record. To challenge this decision, Vanessa filed an administrative appeal with the support of the National Public Defender's Office to request an exemption from her removal because she is the mother of three Argentine children and has proven deep roots in the country after staying uninterruptedly for fifteen years. In September 2016, this appeal was dismissed.

After over a year with no news about her migration status, Vanessa decided to give up the counsel services from the National Public Defender's Office and pursue her case with a private attorney. Vanessa failed to set a new address for procedural purposes or designate a new attorney of record. In spite of this, the process continued without any official or private defence for Vanessa and her children. The National Migrations Office served notice of the dismissed appeal against the deportation order at the first address specified by Vanessa when she came to the country in 2003, an address at which she had not been living for several years.

In spite of that, in October 2018, the National Migrations Office deemed Vanessa had been duly notified and required the court to issue a detention order to execute the deportation. The Federal Court in Contentious-Administrative Matters simply confirmed the existence of the deportation order, with no consideration to Vanessa's special situation, and authorised her detention for deportation purposes.

On 1 February 2019, police officers showed up at Vanessa's house and requested that she should accompany them to "sign a notice". The police officers told her that it was a simple and quick process so Vanessa took her youngest son, aged 2, with her and left her other two children, aged 6 and 14, behind. Vanessa was deceived and both she and her baby were placed in a cell without light or water for a few hours and then taken directly to Ezeiza International Airport, where their detention continued. Three days later she was forced to leave the country together with her infant child without having been able to say goodbye to her other two Argentine children -who remain in the country and are being cared for by relatives<sup>31</sup>.

Amnesty International and other civil society organisations filed a petition for a precautionary measure with the Inter-American Commission on Human Rights (IACHR) that was also followed by *amicus curiae* of the Prison Ombudsman's Office. The petition asked the IACHR to order the State to lift the re-entry ban so that Vanessa can return to the country and reunite with her family. The IACHR rejected the petition on 9 July 2019 but decided to follow-up the situation through a request of information letter to the State<sup>32</sup>.

<sup>31</sup> During the time between her detention and her removal, Vanessa contacted a private attorney who filed a petition for a writ of *habeas corpus* after he personally saw the conditions under which Vanessa and her infant child were held. Since a judge had issued the deportation order, it was understood that the Judiciary was already hearing the case so the writ of *habeas corpus* was dismissed. Vanessa's attorney filed an appeal, which was rejected, so he filed another appeal for reversal, which was held inadmissible. Because of this decision, an Extraordinary Federal Appeal was filed with the National Supreme Court of Justice, which was declared inadmissible by a majority vote, with one dissenting vote. To challenge this decision, the attorney filed a motion for admission of the denied appeal with the National Supreme Court of Justice. Furthermore, Vanessa's attorney filed an appeal against the ruling by the Federal Court in Contentious-Administrative Matters that authorised Vanessa's detention, as well as a petition for protection against the infringement of constitutional rights on behalf of Vanessa and her children, all national citizens and minors, requesting that their right to family unity be ensured with special consideration to the children's best interest. This petition was denied on May 2019. Her attorney filed an appeal, but it was held inadmissible by the Higher Court on June 2019. Vanessa's attorney again filed a motion for admission of the denied appeal with the National Supreme Court of Justice that awaits treatment. Finally, a decision is also pending regarding a petition for administrative review filed with the National Migrations Office against the administrative decision that ordered Vanessa's deportation from Argentina and permanently banned entrance. This petition for review was filed following the directions of the Director of the National Migrations Office that after hearing Vanessa's lawyer description of the numerous irregularities and violations in a meeting held in February 2019 between them, told personally told him to file the petition for review. In July, Vanessa's attorney filed a request for urgent treatment given that five months have gone by and there is still no resolution for this petition.

<sup>32</sup> Inter-American Commission on Human Rights, Decision on petition for precautionary measures, MC-453-19.

Even though the Argentine laws consider family unity a criterion to grant deportation exemptions, and this exception applies to the case of Vanessa and her children, the government's answers -at administrative and court level- have not properly considered the particular circumstances of the case and have failed to assess the impact that the decision to separate a family has on Vanessa's family.

### **JHONNY QUIRÓZ**

Jhonny Quiróz is a Bolivian citizen that has lived in Argentina since 2000. Jhonny worked as a blacksmith and is the father of a 12-year-old Argentinian child from whom he was forcibly separated. In 2015, Jhonny was conditionally sentenced to three years of imprisonment for aggravated coercion, resisting an officer and minor injuries. In April 2019, he was detained while he was participating in a demonstration together with the Argentine Building Workers Union. After the authorities verified that there was a deportation order issued against him, he was forcibly returned to Bolivia two days after having been detained.

The National Migrations Office notified the deportation decision to Jhonny's last address, but since he did not live there anymore he was never effectively notified, losing his chance to appeal. Jhonny's right to a due process and a defence were violated.

Both the National Migrations Office and the contentious-administrative judge who revised the order and executed the detention for deportation purposes assumed the validity of a process in which the right to due process and defence had been violated and proceeded to separate a father from his son without considering the harm that this decision can cause on the child. The State failed to address the particular situation with disregard of the family unity criterion.

### **LIZ MORETA**

Liz Moreta, a Dominican Republic citizen, arrived in Argentina in 2005 and was detained upon arrival at Ezeiza International Airport. She was sentenced to 4 years and 6 months of imprisonment on the grounds of drug trafficking. In August 2007, the National Migrations Office declared her permanence in the country to be irregular, ordered her deportation and banned her re-entrance.

With the support of the Public Prosecutor's Office, Liz applied for a review of such decision invoking the family unity criterion and relying on her right to a family life and her children's best interest. Liz is married to an Argentine citizen with whom she had two children. In April 2018, the appeal was rejected on the basis that, although the petitioner is the mother of Argentine children, the exemption could not be granted due to the seriousness and the nature of the offence for which she had served sentence.

Liz took her case to a National Court in Federal Contentious-Administrative matters. On March 2019, the court rejected the appeal and confirmed the administrative decision based on the argument that the exemption requested is a "discretionary and privative power granted to the National Migrations Office".

Recently, her public defence filed an Extraordinary Federal Appeal with the National Supreme Court of Justice. The Prison Ombudsman's Office has given an opinion in its capacity as *amicus curiae* and the case now awaits consideration before the National Supreme Court.

### **EVANGELINA**

Evangelina (fictitious name) was born in Paraguay and has lived in Argentina for 14 years. She is the mother to three Argentinian children aged 3, 5 and 12. Evangelina was sentenced to 4 years of imprisonment for drug trafficking, which she served and completed in 2010.

In an attempt to regularize her migration status, she approached the National Migrations Office and in this same act the Office became aware of her criminal record and issued an order of deportation. Against this decision, Evangelina filed an appeal with the support of the National Public Defender's Office.

The Judiciary confirmed the administrative decision at every instance. More recently, the National Supreme Court denied the last appeal by means of a rejection *in limine*, that is, without thoroughly analysing the situation.

Evangelina's case is another example of how the government is breaking families apart without due consideration of the human rights at stake.

### **R.A.S.O.**

In July 2001, Ms. R.A.S.O., a Peruvian citizen, was sentenced to 4 years and 6 months of imprisonment by a Federal Court for drug trafficking. Ms. R.A.S.O. served her sentence and regained freedom in 2003. She and her husband have two Argentinian children.

In December 2003, the National Migrations Office issued a deportation order against her and further established an 8-year re-entry ban to the country. In June 2005, Ms. R.A.S.O. filed a review of this decision, which was rejected at administrative level. In April 2009, Ms. R.A.S.O. filed a new appeal which was also rejected in November 2010.

In March 2011, her public defence initiated court proceedings and in June 2015 the court confirmed the ruling of the National Migrations Office. Against this, an Extraordinary Federal Appeal was filed upon the National Supreme Court of Justice which was supported by the Prison Ombudsman's Office in its capacity as *amicus curiae*.

#### **J.H.B.**

J.H.B. is a Peruvian citizen who was detained and deported from Argentina on January 2017. The deportation was based on a criminal record for which J.H.B. had already served sentence with his record considered expired in 2016.

The fact that his family permanently resided in Argentina was also ignored. To this date, J.H.B. has not been able to return to Argentina and his family is still living in the country. Against this background, his defence filed a writ of *habeas corpus* at judicial level and a petition for protection on the basis of family unity and protection of children's rights.

The lower court rejected the appeal but when the case received treatment by a higher court, the latter understood that the fact that J.H.B. had children in the country was enough to halt the deportation procedure. Nonetheless, by the time the higher court made this pronouncement the deportation had already occurred. The higher court asked the National Migration Office for explanations on whether the particular circumstance of J.H.B. was considered and the answer was that it was but that the administration had no obligation to excuse J.H.B. from deportation.

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TO ONE PERSON, IT  
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# ARGENTINA

## REPORT TO THE UNITED NATIONS COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

31<sup>ST</sup> SESSION, 2-11 SEPTEMBER 2019

Amnesty International submits this report to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereafter referred to as the Committee on Migrant Workers or the Committee) in advance of the review of Argentina's second periodic report on the implementation of the Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.

Having previously been a country recognized by regional and international bodies as a role model in terms of immigration policy, the concerns set out in this submission describe regressive measures that the state party has adopted, through regulations and practices, to restrict the rights of migrants and encourage discrimination and xenophobia against this population.