

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: Fourth Cycle, 42nd Session

ARGENTINA

I. BACKGROUND INFORMATION

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 *1951 Convention*). Furthermore, Argentina acceded to the *1954 Convention on the Status of Stateless Persons* in 1972, and to the *1961 Convention on the Reduction of Statelessness* in 2014.

According to the *National Constitution* (1994), treaties take precedence over national laws. Certain international human rights instruments and treaties 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 established and put the National Committee for Refugees (CONARE) in charge of adjudicating asylum claims and finding durable solutions for refugees. The *Refugee Law* is further complemented by several 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.

As of December 2021, Argentina hosted 4,075 recognized refugees, mainly from Colombia (14 per cent), Perú (13 per cent) and Syria (11 per cent) and 11,082 asylum-seekers mainly from Venezuela (50 per cent), Senegal (12 per cent) and Cuba (7 per cent). Approximately 57 per cent of refugees and asylum-seekers residing in Argentina are female.

Special attention must be paid to the impact of the Venezuela situation that is affecting the neighbouring countries, including Argentina and other countries in the region. The ongoing political, human rights, and socio-economic developments in Venezuela have led to the outflow of more than 6 million refugees and migrants from the country. International protection considerations have become apparent for a significant proportion of those leaving Venezuela. As for December 2021, 164.662 refugees and migrants in Argentina, (91 per cent of people of concern for UNHCR), were from Venezuela.

UNHCR's Office in Argentina is focused on providing support to refugees, asylum-seekers and Venezuelan nationals displaced abroad. UNHCR works with its partner agencies to guarantee access to the territory, access to asylum and/or regularization, and family reunification. It also provides goods and services to cover basic needs such as housing, health and clothing items, both through cash-based and in-kind assistance.

UNHCR and its partners are present in strategic border areas with Points of Attention and Orientation (PAOs) located in La Quiaca, San Salvador de Jujuy, Mendoza, Posadas and Puerto Iguazú where those who enter the country by land receive counseling, legal orientation and humanitarian assistance. Additionally, UNHCR supports the work of CONARE through technical advice, regular training and capacity-building for the implementation of fair and efficient RSD procedures.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Linked to 3rd cycle UPR recommendation no. 107.187: “Strengthen the legislation to combat statelessness by adopting the new draft bill on the protection of the stateless (Côte d’Ivoire)” and **recommendation no. 107.188:** “Accelerate its efforts to enact legislation on the protection of stateless persons (Australia).”¹

In August 2019, the Government of Argentina enacted the *Law No. 27.512 for the Recognition and Protection of Stateless Persons (Statelessness Law)*. This legal framework aims at guaranteeing stateless persons’ human rights, specifically, facilitating their access to personal documentation or travel documents, and to exercise their fundamental rights such as education, health care, and employment. Through this legislative measure, Argentina is able to determine the condition of stateless persons, assure protection and assistance for them, and facilitate their process of naturalization. The law was developed with technical assistance from UNHCR, which also provided training on stateless determination to authorities and collaborated in the design of internal procedural regulations for the implementation of the *Statelessness Law*.

UNHCR commends the enactment of the *Statelessness Law* and the development of a regulatory and institutional framework in line with international standards. This means an important step towards the eradication of statelessness in Argentina, and a substantial progress towards making the Americas the first region in the world to eradicate statelessness by 2024, as part of the commitments made by Latin American and Caribbean States under the Brazil Plan of Action adopted in 2014.²

UNHCR welcomes and encourages authorities to commit to the adoption of measures to produce information on the size or characteristics of the stateless population in Argentina and to identify persons in risk of statelessness within the country.

Linked to 3rd cycle UPR recommendation no. 107.184: “Guarantee that the decree of necessity and urgency that limits the procedural guarantees in deportation proceedings does not restrict the human rights of migrant population (Mexico).”

UNHCR commends Argentina for repealing the *Emergency Decree No. 70/2017* decided on 4 March 2021.

In January 2017, the Government had adopted *Emergency Decree No. 70/2017*³, substantially modifying *Migration Law No. 25.871 (2004)* and *Citizenship Act No. 346*. The Decree represented a restrictive and regressive measure, allowing migrants’ expulsion for a wide category of offences through a special abbreviated procedure. Besides, *Emergency Decree No. 70/2017* had hardened the possibility to invoke family reunification reasons to avoid residence cancellations and, consequently, expulsions. In that sense, best interest assessment and best interest determination procedures were not being considered to preserve family unity and prevent expulsions. Moreover, the implementation of *Emergency Decree No. 70/2017* exposed persons in need of international protection, such as Venezuelan nationals, to extremely abbreviated expulsion procedures and restrictions on the right to appeal expulsion decisions.

In addition, the *Emergency Decree No. 70/2017* placed restrictions on access to the territory, prohibiting entry for a wide range of reasons which ignored the specific situation of persons in need of international protection. For instance, access to the territory was prohibited for migrants who have committed administrative infractions during migratory processes, who had been convicted, had criminal records, or were under process without a final judgement,

¹ All recommendations made to Argentina during its 3rd cycle UPR can be found in: “Report of the Working Group on the Universal Periodic Review of Argentina” (22 December 2017), A/HRC/37/5, available at: <https://www.ohchr.org/es/documents/reports/report-working-group-universal-periodic-review-argentina>

² United Nations High Commissioner for Refugees (UNHCR), *Declaración y Plan de Acción de Brasil*, 10 Diciembre 2014, available at: <https://www.refworld.org/es/docid/5d7fceb5.html>

³Emergency Decree No. 70/2017, 27 January 2017, available at: <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=271245>

both in Argentina or abroad, for any crime that, according to Argentine law, would be punished with imprisonment.

UNHCR wishes to congratulate Argentina for revoking and cease the implementation of the *Emergency Decree No. 70/2017* decided on 4 March 2021. This decision was also widely supported by migrant organizations, human rights groups and other civil society organizations who had constantly expressed that the enactment of the *Emergency Decree No. 70/2017* had implied a serious step back on the human rights approach set by the Argentina legal framework and the National Constitution.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 3rd cycle UPR recommendations

Issue 1: Measures to facilitate migratory regularization

Linked to 3rd cycle UPR recommendation no. 107.183: “Strengthen measures to ensure the human rights of migrants and their families (Plurinational State of Bolivia).”

Despite the efforts made by the State to bring its migration legislation back in line with international standards, taking measures such as the repeal of *Emergency Decree No. 70/2017* in 2021 and the adoption in 2022 of several migratory regularization regimes for Senegalese, Dominican, Cuban and Caribbean Community (CARICOM) nationals, Argentina still needs to ensure migratory alternatives, documentation, and access to rights to hundreds of migrants currently in the country, particularly Venezuelan nationals.

Besides the challenges caused by an increase in mixed movements in the region and the number of asylum applications, as well as the impact of the COVID 19 pandemic, UNHCR notes that the protection space for people in need of international protection in Argentina has been reduced and that the asylum system is suffering a process of deterioration. Access to the territory and the right to asylum at borders is not being respected in accordance with international standards and refugee legislation.

Asylum registration and procedure are not accepted at border points. Although some exceptions have been detected, there are no clear criteria for their implementation, and authorization is discretionary by the authorities. UNHCR is concerned of cases in which migration authorities have not registered asylum claims at the border without having completed any of the steps and safeguards foreseen on the refugee status determination procedure and without the intervention of competent asylum authorities (National Commission for Refugees, CONARE).

Moreover, strict borders closure implemented by the Argentine authorities due to the COVID-19 pandemic led many UNHCR’s persons of concern (asylum-seekers, refugees, Venezuelans displaced abroad) to access Argentinian territory irregularly, with the subsequent inconveniences that such irregular entries generated in the enjoyment of fundamental rights.

Additionally, Provision 520/2019 which allowed the entry of Venezuelan nationals with expired travel documents and Venezuelan children holding only its birth certificate, is not currently being apply although it has not been revoked.

Recommendations:

UNHCR recommends that the Government of Argentina:

- a) Ensure access to regularization, documentation, and rights, particularly to Venezuelan nationals, despite their irregular entry/stay into the territory, and/or

- incomplete documentation or expired travel documents; and,
- b) Adopt all necessary measures to ensure the full and effective implementation of the provisions and safeguards provided in the *Refugee Law* at all border entry points, without discrimination.

Additional protection challenges

Issue 2: Access to territory, non-refoulement, and access to asylum.

During the COVID-19 pandemic, the Government adopted a series of measures for the protection of the public health, including an extensive prolonged borders closure without exceptions. UNHCR and its partner agencies monitored the situation at borders and provided humanitarian assistance to refugees and migrants, most of them Venezuelan nationals, who were forced to enter irregularly into the territory because of the lack of other legal alternatives. There have been reports of refoulement at borders and denial of access to the territory for persons in need of international protection.

Since October 2021, Argentina has been gradually reopening its borders, making the entry of foreigners, including refugees and asylum seekers, more flexible, if they met the sanitary requirements established by the Ministry of Public Health. On January 25, 2022, the Government of Argentina issued Administrative Decision 63/224, which established the different sanitary entry requirements, which are mandatory with no exceptions, even for individuals seeking asylum at the borders (eg. Full vaccination schedule; COVID-19 medical insurance; PCR test, etc.).

UNHCR is particularly concerned because no standard operating procedure or protocol have been adopted since the reopening of borders to ensure the identification and referral of persons in need of international protection, neither at land borders nor at international airports.

UNHCR wishes to emphasize that the adoption of protocols and/or instructions for border officers, jointly with the implementation of a thorough training strategy on international refugee law and human rights, remains a key tool to prevent and reduce refoulement risks in a context of mixed flows.

In 2022 UNHCR and its partners have identified incidents at borders and/or at Migration Offices where Venezuelans were discouraged from filing asylum applications. Migratory authorities have been issued orders to Venezuelan nationals (including children) who had entered the country irregularly during the COVID-19 pandemic, when borders were closed. Those individuals are warned that they had to leave Argentina in 30 days or, otherwise, they would be expelled.

UNHCR wishes to highlight that the right to seek asylum and the principle of non-refoulement should be respected without discrimination, particularly at borders and by migration officers, even when authorities need to adopt rigorous measures to protect public health. Also, UNHCR wishes to note the relevance to adopt protocols, procedures and instructions to ensure effective safeguards for access to the territory and to asylum for those in need of international protection.

Recommendations:

UNHCR recommends that the Government of Argentina:

- a) Ensure effective access to the right to seek and enjoy asylum by resuming the reception and processing of asylum claims in accordance with international obligations and national refugee legislation;
 - b) Ensure the implementation of training or sensitization activities for migration and border control officers on refugee law, human rights law and *non-refoulement*; and,
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- c) Refrain from discouraging Venezuelan nationals from filing asylum claims and guarantee their right to seek and enjoy asylum in accordance with international and regional standards.

Issue 3: Strengthen the RSD procedure to reduce the current backlog of pending cases.

UNHCR is concerned about the length of time asylum seekers must wait for a decision by CONARE (which can take between 2 to 5 years, or longer). While the number of asylum applications dropped significantly in 2020 due to COVID-19 restrictions and borders closure, this has not led to a reduction in processing times. The closure of CONARE's premises for most of 2020, the suspension of CONARE's meetings, and the lack of adequate instruments to continue implementing RSD procedures in times of sanitary restrictions and distance, caused more delays in the registration and decision process and, thus, CONARE's backlog has increased. As of June 2022, there are more than 11,000 pending asylum applications, most of them filed by Venezuelan nationals.

Following UNHCR's recommendations, during the COVID- 19 restrictions CONARE implemented a procedure for registering asylum applications through an on-line platform. It has also adopted a protocol to ensure that interviews could be conducted remotely. However, the on-line registration mechanism was abandoned by CONARE in July 2021 and very few RSD interviews were carried out remotely.

UNHCR wishes to note several challenges that the Argentina's asylum system is currently facing. The significant increase in the number of asylum seekers, the lack of trained human resources at the CONARE Secretariat, and a persistent inefficient RSD procedure. These challenges have resulted in significant delays in decision process, problems in registration, and long delays in the identification and protection of persons with specific needs. Efforts must be made by asylum authorities to speed up the refugee status determination procedures and allocate CONARE with sufficient trained human resources to reduce the current backlog and to prevent its increase.

Recommendations:

UNHCR recommends that the Government of Argentina:

- a) Adopt standard operating procedures (SOPs), protocols or mechanisms for migration and border officers on the identification of persons in need of international protection at borders and airports and for their immediate referral to the asylum procedure; and,
- b) Ensure the provision of sufficient human and technical resources to implement a fair and efficient refugee status determination procedure, adopt concrete measures to reduce CONARE's backlog, prevent its increase, and expedite CONARE's decisions.

Issue 4: Confidentiality regarding asylum procedure

The *Refugee Law*, which is in line with international standards, stipulates the principle of confidentiality of all aspects of an asylum claim and at all stages of the asylum procedure (arts. 2, 32 and 48).

However, UNHCR and its partner agencies have identified that in order to resolve issues related to the lack of national documentation and/ or expired travel documents of Venezuelans seeking asylum at borders, consular authorities of the country of origin have been contacted by Argentinian authorities, without proper consideration of confidentiality issues and standards.

UNHCR would like to note that "*The practice of disclosing confidential information to the country of origin may inhibit asylum-seekers from fully explaining their cases, or even from making a claim for refugee status. Overall, it would be against the spirit of the 1951*

Convention to share personal data or any other information relating to asylum-seekers with the authorities of the country of origin.”⁵

Recommendation:

UNHCR recommends that the Government of Argentina:

- a) Guarantee the principle of confidentiality about the identity and claims of asylum-seekers and refugees, and refrain from sharing asylum-seekers’ and refugees’ information with government authorities in their countries of origin.

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⁵ UN High Commissioner for Refugees (UNHCR), UNHCR Advisory Opinion on the Rules of Confidentiality Regarding Asylum Information, 31 March 2005, available at: <http://www.refworld.org/docid/42b9190e4.html>