

## UNIVERSAL PERIODIC REVIEW – FOURTH CYCLE

### CONTRIBUTION TO THE REVIEW OF ARGENTINA

#### **Migrants' rights in Argentina**

**Civil society report prepared jointly by the Center for Legal and Social Studies (CELS),<sup>1</sup> Argentinian Commission for Refugees and Migrants (CAREF);<sup>2</sup> and the Institute of Justice and Human Rights of the National University of Lanús (IJDHUNLa).<sup>3</sup>**

#### **I. Opening remarks**

1. Data from mid-2020 show that Argentina is home to the largest population of foreign-born people in the region (2.3 million migrants), mainly from neighboring countries.<sup>4</sup> Since 2003, Law 25.871 has been in force in the country, internationally recognized for governing migrations from a logic of guaranteeing migrants' human rights.
2. The Migration Law 25.871 and its Regulatory Decree 616/2010 instituted a broad policy of rights whose central axes are the regularization of migration as an obligation of the State, access to justice and due process in any immigration-related procedure involving expulsion or detention, family unity, and the elimination of differences in the access to rights between Argentines and foreigners.
3. Regardless of the spirit of the Migration Law, policies to facilitate and promote regularization have been lacking for years.

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<sup>1</sup> CELS has been working to promote and protect human rights since 1979. The organization's broad agenda has included the defense of migrants' human rights for several decades. To conduct its work, CELS pursues strategic litigation, conducts research, and engages in public policy advocacy in Argentina and through international and regional human rights bodies (the Inter-American Commission on Human Rights, Treaty Bodies, Special Procedures, etc.). For more information, visit <http://www.cels.org.ar>

<sup>2</sup> The Argentinian Commission for Refugees and Migrants (Comisión Argentina para los Refugiados y Migrantes—CAREF) is a civil association that has been working for the rights of migrants, refugees and asylum seekers since 1973. It provides professional advisory services, guidance, training and social and legal assistance. It also promotes actions for the definition of State policies. Since 2002, CELS, CAREF and the Law School of the University of Buenos Aires (UBA) have operated an Immigrant and Refugee Rights Clinic. The clinic advises and sponsors 300 migrants and/or refugees' per year on average. For more information, visit <http://www.caref.org.ar/>

<sup>3</sup> The Institute of Justice and Human Rights of the National University of Lanús (IJDHUNLa) was opened in December 1996. Its mission includes the research, teaching and promotion of human rights as a component of public policy and democracy. Currently, the Migration and Human Rights program is carrying out a number of initiatives that include research, teaching and influencing policy related to the human rights of migrants. For more information, visit <http://www.unla.edu.ar/novedades/content/instituto-de-justicia-y-derechos-humanos>  
<sup>4</sup>[https://robuenosaires.iom.int/sites/g/files/tmzbdl626/files/documents/tendencias-recientes-de-la-migracion-en-las-americas\\_sp.pdf](https://robuenosaires.iom.int/sites/g/files/tmzbdl626/files/documents/tendencias-recientes-de-la-migracion-en-las-americas_sp.pdf)

## II. Migration regularization: a forgotten priority

### II a. The increase in irregular migration

4. Between the last Universal Periodic Review (UPR) carried out in Argentina and 2020, the number of successful residence procedures has been steadily decreasing. According to statistics published by the National Directorate of Migration (DNM),<sup>5</sup> from 259,505 residencies granted in 2015, the number dropped to 224,320 in 2016 and 223,010 in 2017. This figure rebounded slightly to 230,523 in 2018 and then fell sharply to 168,405 in 2019. This situation was aggravated by the COVID-19 pandemic and the Social Isolation Order: only 89,201 filings were resolved in 2020.
5. The fall in residency procedures can be explained by multiple causes: between 2016 and 2017, the DNM created an online appointment system that generated delays of up to a year. It was replaced in 2018 by an even more complex system called the Remote Residency for Foreigners (RADEX). In force, RADEX is an online platform that processes residency applications. Its implementation automatically led to the cancellation of 200,000 face-to-face appointments already booked for 2019.
6. The system's complexity, technological barriers, and delays in processing applications are clear obstacles hindering access to regular immigration status and imply a setback in the fulfillment of the State's obligation under the Immigration Law.
7. In addition to administrative and technological obstacles, as of March 2020, the closure of public agencies and the suspension of migration regularization procedures during the months of strict quarantine due to the COVID-19 pandemic represent additional obstacles. In this context, State measures taken to contain the irregularity during the beginning of the pandemic were limited to granting an automatic extension, for thirty days, of the validity of documents and visas that expired during the isolation period. At the same time, the DNM provided a virtual mechanism to manage the Electronic Precarious Residency Certificate. However, the automatic online renewal did not operate in all cases, often having to be requested ad hoc through letters. New procedures could be initiated using RADEX, accessing, in the best of cases, a certificate of temporary residency. The transition to permanent residency was not possible while the offices were closed. Instead, temporary residencies were in effect.
8. **As a consequence of these obstacles and delays, a growing number of people found themselves in irregular situations or their documentation was precarious with all that this implies: insurmountable difficulties to work legally, rent a house, or access social security and the emergency programs and circulation permits created during the COVID-19 pandemic.**

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<sup>5</sup> Immigration data related to residency filings presented here are from statistical documents provided by the National Direction of Migration, on January 13, 2021, in response to a request for access to public information made by Ana Paula Penchaszadeh (CONICET/IIGG-FSOC-UBA).

9. In 2021, the number of residency applications granted increased significantly, reaching 19,897 procedures.<sup>6</sup> We welcome this growth which—although logical due to the reopening of the borders and the end of confinement—demonstrates the interest of the migrant population to regularize their status. At the same time, it underscores the importance of keeping State channels open.
10. Border closures during the pandemic not only represented an unprecedented event for our country but they were upheld for a very long period during which no clear exception mechanisms for access to the territory were established. As a result, people who were in transit at the time of border closures or who subsequently moved in search of international protection or reunification with their families had no alternative but to opt for irregular movements.<sup>7</sup> Today, **because they do not have regular entry records, they are finding it difficult to obtain regular migration status.**<sup>8</sup>
11. People coming from countries outside Mercosur have historically faced obstacles when trying to regularize their status in Argentina. For them, the criteria established by the Migration Law for access to residency are limited and difficult to comply with. This situation leads to a large part of this population living in an irregular situation or with precarious documentation. In view of this, on May 23, 2022, the DNM approved two special regimes of migratory regularization for foreign nationals from Senegal and CARICOM, the Dominican Republic, and the Republic of Cuba.<sup>9</sup>
12. While any policy to regularize the status of migrants is applauded, the provisions in question raise several points of concern that should be addressed. The first of these is **the 90-day deadline to apply, which is extremely tight**, especially if the delays involved in obtaining the required documentation from the country of origin are taken into account. One example is the submission of the applicant's criminal record from their country of origin which, in the cases of Haiti and Senegal, is impossible to obtain within the stipulated period. The second point

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<sup>6</sup> Data provided by the National Directorate of Migration in response to a request for information made by Caref.

<sup>7</sup>The recent report " Fronteras cerradas por pandemia: Familias en movimiento y sus tránsitos hacia Argentina (2020-2021)" [Closed Borders due to Pandemic: Families on the move and their passage to Argentina (2020-2021)], carried out by CAREF and UNHCR, reports on the movement of migrants and asylum seekers who came to Argentina over that period. It shows the regressive effects of diverse and fragmented policies and administrative practices implemented in the context of the Covid health emergency. For illustrative purposes only, between November 1, 2020 and October 30, 2021, of the total number of people who consulted CAREF's Social Service, 1,460 (33%) did not have an entry stamp to the country. The majority (1,380) were Venezuelan, and 320 were children and adolescents under 18 years of age. The number of people who entered the country irregularly during the pandemic is likely to be much higher than that recorded by Caref. However, due to the characteristics of irregular migration, it is very difficult to have an accurate figure. Report is available at: <https://www.dropbox.com/s/s9jg2yxc4t6o3w0/Fronteras%20cerradas%20por%20pandemia.%20Familias%20en%20movimiento%20y%20sus%20tr%C3%A1nsitos%20a%20Argentina.%202020-2021.pdf?dl=0>

<sup>8</sup>In the case of foreigners, authorized entry into the country of which they are neither nationals nor residents (with the corresponding administrative record, which usually takes the form of a stamp in the passport or a ticket issued by the immigration authority) is indispensable for their subsequent immigration regularization.

<sup>9</sup> Available at: <https://www.argentina.gob.ar/normativa/nacional/disposici%C3%B3n-940-2022-365265/texto> y <https://www.argentina.gob.ar/normativa/nacional/disposici%C3%B3n-941-2022-365266/texto>

of concern is clause No. 5 of the provisions,<sup>10</sup> which states that any incomplete application (without all the required documentation in full in the first instance) will be denied and the applicant will not be allowed to be reconsidered.

13. On May 16, 2022, the DNM also approved a special visa program for persons displaced by socio-natural disasters.<sup>11</sup> This new provision, which is limited, is worrisome for several reasons. First, the visa logic only hinders the possibilities of migration, leading to irregularity but without reducing or preventing the forced migration of those who are suffering from a natural disaster. Second, the system is further complicated because it operates exclusively through the figure of requirers, i.e., with people who must "invite" the migrant and commit to cover all their living expenses for twelve months. Finally, it establishes maximum annual quotas for the reception of cases, which limits the resource even more.
14. This is not the first time that the State has created special regularization programs in response to the situation of a specific population--despite the fact that this should be a permanent obligation and not operate as an exceptional "benefit." However, and precisely for these reasons, **they are a limited, partial solution.** When designing a Special Program, it is necessary to take into account the real possibilities of the target population, establishing reasonable and accessible criteria and flexible requirements. None of these issues seem to have been taken into account in the design of these programs.
15. It must be highlighted that these special programs and those developed in previous years do not solve the structural problem faced by nationals of Non-Mercosur member countries. The response cannot be limited in terms of deadlines or target populations. **The solution for the Non-Mercosur nationals should include a modification of the regularization criteria established in the Law in order to make them truly accessible.** Otherwise, far from limiting entry, it is promoting irregular entry and residency and thus violating the rights of the people affected.
16. The above situation demonstrates the validity of the recommendations made by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families in 2019. There, the State is urged to facilitate regularization with long-term permanent solutions, reduce registration fees, and extend deadlines and time limits for completing migration procedures.<sup>12</sup>

## **II b. Migrant children**

17. As of November 2021, with the post-pandemic reopening of land crossings, we identified an obstacle to regular access to the territory for Venezuelan families with children under the age of nine, given that children in Venezuelan are not granted identity

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<sup>10</sup> "In the event that any of the documents required in point 3 are not attached, the application will be denied, and the foreigner will be ordered to leave the country under penalty of being expelled from the National Territory or, if any, to abide by the expulsion measures previously issued and suspended. Once the procedure has been denied, the foreigner will not be able to apply for the above mentioned Regime again."

<sup>11</sup> DNM Provision 891/2022 "Special humanitarian visa program for nationals and residents of the United Mexican States, Central America and the Caribbean displaced by socio-natural disasters."

<sup>12</sup> CMW/C/ARG/CO/2 recommendation No. 53

cards or passports until they turn ten. In many cases, families arrived to join family members with regular immigration status already residing in Argentina and were then forced to remain separated in the absence of a migration solution or protection for a lack of documentation beyond their control.

18. This meant that, in some cases, children entered the territory without passing through immigration checkpoints. In others, as a result of the interventions of Civil Society organizations present at the borders and the Public Defender's Offices, emergency entry modalities were secured. However, these entries were provisional entry permits, which are not regular entry methods within the framework of the regulations and are not designed to guarantee permanence and access to residency procedures.
19. Some families agreed to request consular assistance to try to find a solution to this problem. However, they only manage to obtain a certificate of initiation of the passport process which, although it allows regular entry into the territory, is not an identity document that resolves the migratory situation. The only way to obtain a Venezuelan passport is by paying a very high cost (U\$S 250,-) which is impossible for many families in vulnerable situations.
20. The problem of displaced Venezuelan children without identity documents has been approached solely from a migration control logic, ignoring the situation of vulnerability in which these children find themselves and the risk to the exercise of their rights. The solution must be evaluated in accordance with the best interests of the child and with the logic of protection, through accessible, affordable, and lasting mechanisms.

### **II c. Economic obstacles**

21. The regularization policy of the Argentine State has also been overshadowed by **the steady increase in immigration fees in recent years**.<sup>13</sup> The costs of immigration procedures leave the poorest migrants at a disadvantage when it comes to regularization. The fees to initiate residency procedures cost 3,000 pesos for migrants coming from Mercosur countries (about USD 70) and 6,000 pesos for non-Mercosur migrants (about USD 140), which represents a clear discriminatory policy toward the latter. The minimum wage in Argentina in 2018 (the year of the last rate increase) was 10,700 pesos. Thus, the fees are respectively between 28% and 56% of the base salary.
22. On April 29, 2021, through Decree 285/2021, a mechanism was established whereby the cost of immigration fees is subject to a "Unit of Measurement of Migratory Services" (UMSM) whose value will be determined by the Ministry of the Interior as reported by the Directorate of Migration. Thus, the Directorate of Migration and the Ministry of the Interior can decide to increase migration fees, without any oversight of any other branch of government or State authority. In turn, delegating to the National Executive Branch the power to set the fee amount is

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<sup>13</sup> In 2016, by means of Decree 959/2016, the rates increased between 200% and 600%. In May 2018, by means of Decree 475/2018, the DNM again increased the rates by 200%.

unconstitutional, since it is an exclusive power of the Legislative Branch, being a tax matter.

### **III. Lack of state responses: the suspension of international protection mechanisms**

23. As a consequence of the COVID-19 pandemic, the National Government decreed in March 2020 the closing of the borders.<sup>14</sup> This measure, however, did not establish clear exceptions that address public health, nor the protection of the rights of persons in need of international protection, humanitarian reasons, family unity needs, or the best interests of the child. The exceptional criteria underwent constant modifications, oftentimes leaving entry subject to the discretion of the migratory authority.
24. In addition to border closings, many border posts were also closed. As a result, individuals crossing into Argentina were unable to present their request for access to any migratory authority as outlined in the asylum procedure provided for in Law 26.165 (art. 40-41). Despite this, people need to enter the territory so they can access this fundamental procedure for the recognition of their rights.
25. In response to the closure of offices and border posts, the National Commission for Refugees (CONARE) created an online form to apply for asylum remotely. This decision proved to be an open and accessible channel in the exceptional scenario of the closure of public offices, even making it possible to obtain a temporary document.
26. In mid-2021, the form was taken down, meaning that persons in need of protection who wished to file their asylum application could only do so in person at the DNM delegations or CONARE headquarters. This modification posed an obstacle for people in localities far from the DNM delegations, who were forced to move without any kind of provisional documentation with an irregular status.<sup>15</sup>
27. After a series of presentations made by civil society organizations to CONARE, the web form was reactivated but it no longer generates a record of the request with the corresponding issuance of the temporary document required by law. It is merely a database to then inform people that they must go to the delegations to initiate the procedure in person.
28. **We have been told by the applicants themselves that, at the Delegations, after having applied for asylum—even after having completed the official forms—their applications were rejected and replaced by precarious residency proceedings given their irregular entry and stay in the country.**<sup>16</sup>

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<sup>14</sup> Pursuant to DNU No. 274/2020.

<sup>15</sup> The case of the town of La Quiaca, on the border with Bolivia, is an example of this situation. There is no DNM delegation in La Quiaca and people must go to the city of San Salvador de Jujuy—over 280 km away—to start the application.

<sup>16</sup> In 2020, 1,611 irregular entry control proceedings were opened. Of these, almost 60% corresponded to Paraguayans (339), Bolivians (248), Peruvians (189) and Colombians (160). In 2021, up to and including October, 2,466 irregular entry control proceedings were initiated: 895 for Venezuelans, 459 for Bolivians, 306 for Paraguayans, 195 for Peruvians and 170 for Colombians. Data requested by CAREF and provided by the DNM.

29. This functioning is extremely worrying because, as a result of irregular entry control proceedings, **the risk of administrative sanctions for irregular entry, including expulsion, falls upon migrants and applicants.** This situation contradicts the 2019 recommendations made by the Committee on Migrant Workers<sup>17</sup> and the principles of international protection established in the Convention Relating to the Status of Refugees and included in Law 26.165.<sup>18</sup> The reformulation of the asylum application process represents a clear **violation of the right to seek international protection and a discretionary administrative practice: in this manner, the State lumps together two legal categories with unavoidable differences, such as the status of migrant and asylum seeker.**<sup>19</sup>
30. In the follow-up of these cases, we observed that **the National Directorate of Migration—given the impossibility of proving applicants’ regular entry—denied migrants’ residency applications and canceled their certificates of precarious residency—leaving them without transit documentation—and ordering them to leave the territory, under the threat of expulsion.** These circumstances were identified in family groups, including children and adolescents. Families have to face high costs in order to comply with the summons received and run the risk of being rejected at the border when they try to return to Argentina. In addition, in those cases in which there is no valid travel document, transits are impossible, thus generating different resolution alternatives within the family groups, causing the risk of separation of families.
31. **Since the opening of land crossings, difficulties persist in applying for international protection at the borders. In the cases of people who come forward expressing their desire to apply for asylum in Argentina, migration authorities deny requests outright or re-direct them to apply for residency through the ordinary migration channels.** It is only through the monitoring and action of defense organizations and agencies that some people manage to access a procedure provided for in national and international regulations.

#### **IV. Expulsion: lingering effects of DNU 70/2017 and the Supreme Court of the Nation’s resolutions.**

32. From civil society, we welcome the decision of the Executive Branch to repeal DNU 70/2017,<sup>20</sup> the implementation of which marked a clear setback in migrants' rights in the country. The annulment of this decree is a fundamental step toward equal rights, the right to migrate, and the obligation of the State to regularize migrants' status, in line with what was suggested by the Committee of Migrant Workers in 2019.<sup>21</sup> The decree introduced a regulatory framework with significant setbacks in guaranteeing the rights of the migrant population, provided for by the

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<sup>17</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families' concluding observations on the second periodic report of Argentina Parr. 11: That the State "d) Ensure that administrative sanctions for irregular entry or stay are proportionate and reasonable and are determined on an individual basis."

<sup>18</sup> Law 26.165, Art 2.

<sup>19</sup> On this point, it also fails to consider the particular impact that a prolonged closure of borders without exceptions has had on the migrant population in terms of social vulnerability and violation of rights.

<sup>20</sup> Available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/270000-274999/271245/norma.htm>

<sup>21</sup> CMW/C/ARG/CO/2, recommendation No. 11

Migration Law: it criminalized migrants and violated the guarantees of due process, access to justice, the right to defense, family unity, and freedom of movement of this population.

33. Notwithstanding the current National Government's decision to derogate **DNU 70/2017** with Decree No. 138/202, **the emergency decree continues to have effects on cases initiated in the period between its publication and its derogation**, failing to comply with the recommendation related to the suspension of its application.<sup>22</sup> According to the information surveyed, there are even expulsions issued based on DNU 70/2017, not yet executed, which could be carried out at present under that norm.
34. Civil society organizations conveyed our concern to DNM officials, who indicated that, in ongoing proceedings or when an expulsion has been effected, a review of the particular case could be conducted and only at the request of a party, applying the regulations in force. **The DNM argued that it will not offer a review and/or revision ex officio, even in the face of the serious consequences generated by the application of DNU 70/2017, which the National State warned against when it justified its repeal.**<sup>23</sup>
35. Civil society organizations have made numerous recommendations to address the situations impacted by the enforcement of the repealed DNU 70/2017, especially in view of the particular status suffered by families separated as a result of this emergency decree.<sup>24</sup>
36. The lingering effects of the repealed DNU 70/2017 are at odds with the recommendations from different States given Argentina during the UPR conducted in 2017<sup>25</sup> regarding the need to "ensure that the DNU, which limits procedural guarantees in expulsion proceedings, does not restrict the human rights of the migrant population."
37. In addition, the expulsions ordered by the Supreme Court of the Nation on December 7, 16, 21 and 28, 2021 are of great concern.<sup>26</sup> Out of a total of 114 cases of expulsion of migrants, 109 were for administrative faults that can (and should) be corrected. The Court's decision followed a restrictive interpretation of the Migration Law: it did not evaluate several articles of the law that categorically state that regularization is an obligation of the State, based on the recognition of the right to migrate. Even in those cases in which the migratory authority can verify some situation of administrative irregularity, it has the obligation to order the migrant to

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<sup>22</sup> Ibid.

<sup>23</sup> In Decree 138/2021, which derogates DNU 70/2017, the State stated that the latter violated the guiding principles on immigration policy, as well as the guarantees of due process, protection of the family and the rights of children and adolescents.

<sup>24</sup> The report conducted by CAREF together with the National Penitentiary Procurator's Office in 2020 "Familias Migrantes: Una mirada sobre el impacto del proceso penal" [Migrant Families: A look at the impact of the criminal process] analyzes the scenarios resulting from the expulsions of migrants with family in the country and recommends possible resolutions, which were not considered by the State after the repeal of DNU 70/2017. Link to the report:

<https://www.ppn.gov.ar/pdf/publicaciones/ediciones-especiales/familias-migrantes-detencion.pdf>

<sup>25</sup> A/HRC/37/5, recommendations 107.183, 107.184, 107.185 and 107.186.

<sup>26</sup> See ANNEX I



regularize his or her situation. Without considering this premise of the legislation, the Court based its decisions on another article of the law that limits the residence in the country of those who enter via unauthorized crossings.

38. The analysis of the cases described above shows that the State—at least in cases prior to March 2021—maintains a position that contradicts the regularization mandate of the Migration Law<sup>27</sup> to the detriment of migrants.

## **V. Voting access**

39. According to the National Electoral Code, only native Argentine men and women or those who have acquired citizenship (nationality) by choice as of 16 years of age and naturalized Argentine men and women are eligible to vote to fill national (federal) elective posts.<sup>28</sup> This difference between voters means that the migrant population is excluded from exercising an elementary right since they have neither voice nor vote.

40. At the local level, it is subject to the regulation that each province has adopted in its Constitution or its provincial laws, resulting in the coexistence of different levels of exercise of the right to vote depending on the jurisdiction. In some provinces, such as Buenos Aires, migrants may vote in all provincial categories and registration is automatic as soon as they obtain residency.<sup>29</sup> In the province of Mendoza, migrants can only vote for municipal offices and registration is a voluntary process that can be done after two years of residency.<sup>30</sup> In the province of Formosa, migrants do not have the right to vote. These examples show the disparity in the exercise of an essential right such as the right to political participation in the communities in which people reside.<sup>31</sup>

41. These conditions encourage and favor the political and electoral use of xenophobic and anti-migrant discourses since there are no negative consequences for those who use them as a pillar or part of their campaigns. It also implies that the migrant population, beyond its roots in the country, is distanced from the spaces of political participation, sustaining the use of prejudices as the backbone of some electoral campaigns.

## **VI. Obstacles to accessing basic rights**

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<sup>27</sup> Art. 4 and 17 of Law 25.871 and Art. 17 of decreto reglamentario 616/2010

<sup>28</sup> That is, migrants who were able to complete the process positively, at the age of 18.

<sup>29</sup> Provincial Law No.11.700

<https://www.argentina.gob.ar/normativa/provincial/ley-11700-123456789-0abc-defg-007-1100bvorpyel/actualizacion>

<sup>30</sup> Electoral Law of the Province of Mendoza No. 2551

<https://www.argentina.gob.ar/normativa/provincial/ley-2551-123456789-0abc-defg-155-2000mvorpyel/actualizacion>

<sup>31</sup> For information on each jurisdiction, please consult the following official link:

<https://www.argentina.gob.ar/interior/extranjeros-residentes-en-argentina>

42. Despite national regulations that oblige public institutions to guarantee equal access to rights<sup>32</sup> and international recommendations,<sup>33</sup> discriminatory practices persist that jeopardize the exercise of these rights and violate the rights of those in the most vulnerable socioeconomic situations.
43. Access to health care for migrants is an issue frequently used by governments that argue that, due to foreigners' unrestricted use of the system, the system is weakened and does not meet the needs of nationals. In recent years, there have been clear expressions by provincial governments tending to restrict access to public health care for migrants, forcing them to pay a cost that nationals do not have to pay. A bill in the Province of Jujuy included clear discrimination based on nationality, based on the economic crisis.<sup>34</sup> The bill was approved but due to the harsh repercussions and the actions of civil society, its implementation was not legislated. Along the same lines, the province of Misiones maintains in force a regulation prior to Law 25.871 which establishes the obligation of non-resident foreigners to pay for the use of public health services, in clear contradiction with the national law and with the Constitution itself.
44. These provincial measures, which encourage discrimination and xenophobia, not only do not translate into economic or qualitative impacts on the system but also go against the right to equal access established in the Migration Law. In turn, they are at odds with the observations and recommendations made by the Committee on Migrant Workers and Members of their Families in 2019.<sup>35</sup>
45. Even though article 6 of the Migration Law guarantees access to social rights regardless of migratory status, migrants experience serious difficulties in accessing economic assistance programs for the socially vulnerable population.<sup>36</sup> The most serious situation is that of non-contributory pensions: the old-age pension (Law 13.478) requires 40 years of residence in the country; the Universal Pension for the Elderly (Law 27.260) requires 20 years of residence; the pension for mothers of more than 7 children (Law 23.746) requires 15 years. Likewise, the disability pension (Decree 432/97) requires legal residence of at least 20 years, thus expressly excluding non-national children and adolescents with disabilities. These requirements were repeatedly criticized for their obvious disproportionality and for contradicting the principle of non-discrimination. However, to date, the regulations have not been brought into line with the expected standards.
46. Even though residency requirements to qualify for the Universal Child Allowance (AUH)<sup>37</sup>, were reduced from three years to two years, migrant children

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<sup>32</sup> National Migration Law No. 25.871 Article No. 6— The State, in all its jurisdictions, shall ensure equal access to immigrants and their families under the same conditions of protection, legal assistance and rights enjoyed by nationals, particularly with regard to social services, public goods, health, education, justice, labor, employment and social security.

<sup>33</sup> A/HRC/37/5 recommendation 107.186 “Ensure access to fundamental human rights for all individuals residing in Argentina, including foreign nationals, regardless of their immigration status.”

<sup>34</sup><https://www.cels.org.ar/web/2019/02/derecho-a-la-salud-en-jujuy-grave-retroceso-para-las-personas-migrantes/>

<sup>35</sup> CMW/C/ARG/CO/2, Recommendation No. 43

<sup>36</sup> See ANNEX II for a detailed analysis of migrants' access to the social security system in Argentina.

<sup>37</sup> Decree 1602/09

up to two years of age remain excluded. At the same time, children born in Argentina depend on the migratory status of their parents because this requirement applies to both parents and their children.

47. Another very important measure is the ACOMPAÑAR program for women in situations of gender violence. However, in order to access the assistance, a period of regular residence of one year is required. Although this is a short period, as in the case of the AUH, it should be considered that in order to access this regular residency, migrants face obstacles and delays, even more so when they are in situations of violence and may not have documentation or money. In other cases, women may not meet the criteria for access to regular migration status.
48. The requirement of the National Identity Card (DNI) as the main means of proof of residence is a major obstacle to accessing those pensions whose allocation criteria require such an extended period of residence. This is due to inconsistencies in the records between the actual entry into the country and the access to the documentation that is generally granted several years later. It is important to evaluate alternatives that take into account the permanence in the country and the fulfillment of the requirements while addressing the needs of the most vulnerable people.
49. The Covid-19 health emergency exacerbated a pre-existing economic crisis in Argentina. In this context, the Argentine government created an emergency program that consisted of income assistance during the months of strict confinement. The "Emergency Family Income" (IFE) was aimed at unemployed people, workers in the informal economy, low-category self-employed workers, socially self-employed workers, and workers in private homes. Although migrants have a high presence among the most precarious forms of the labor structure, the IFE established requirements for foreigners: legal residency of at least two years.
50. These requirements meant that only 4.3% of the program's beneficiaries were migrants. Through the analysis of data from the Permanent Household Survey (Encuesta Permanente de Hogares, EPH)<sup>38</sup> we detected that most of the migrants' rejected applications belonged to foreigners who had been living in the country for years and met the requirements to regularize their status under the terms of Law 25.871 but did not do so. This highlights the deficits in the facilitation and promotion of regularization and access to the DNI as a right for migrants who qualify.
51. **As a consequence, a significant group of people in a situation of vulnerability was left without coverage in an emergency context.** Among them are the most recent migrants, who were excluded because they did not meet the required number of years of residence, and have fewer support networks in the country and few alternatives for emergency support.

## VII. Closing remarks and suggested recommendations

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<sup>38</sup> See Annex II

52. The information presented shows the gap between the management of migration policy in the last four years and the spirit of the Migration Law passed in 2003, which is internationally recognized for its human rights approach.
53. The lack of political will on the part of the State to ensure the rights of migrants has been exposed: the increase in irregular migration; the lack of an ex officio review in cases where DNU 70/2017 is still operating; the suspension of the right to request asylum and the redirection of these requests to migratory proceedings; the issuance of expulsions for cases of irregular entry without contemplating their unique circumstances and causes; the lack of modifications in the requirements to access pensions and the social security system. All these problems are contrary to the recommendations made to the Argentine State in the framework of the 2017 UPR.<sup>39</sup>
54. The lack of action taken by the National State and the DNM to address these issues facilitates the growth of a discriminatory discourse toward the migrant population. This results in unequal access and exercise of rights between migrants and nationals. The State has an obligation to foster and facilitate regularization and it is up to the State to disseminate the message and implement the necessary policies to achieve it.
55. We are very concerned that the lack of a clear message from the National Executive Branch and the bodies that depend on it in migratory matters is giving way to interpretations of the Migration Law that are criminalizing. Expulsions issued by the Court due to administrative failings are not only dangerous because of the creation of jurisprudence, but also because they encourage the rise of a discriminatory and xenophobic discourse within society. At the same time, it implies a step backward in terms of judicial oversight of the migratory authority's actions. Rulings that validate expulsions based solely on compliance with administrative procedural requirements fail to comply with the obligation of the Judiciary to oversee the constitutionality and conventionality of the acts of the State, omitting a comprehensive analysis of the violated rights as well as reasonableness and proportionality.

#### **Questions for the State:**

1. What criteria were used to establish the 90-day term to benefit from the special regularization regimes approved by DNM 940/2022 and 941/2022? Was the difficulty in obtaining the required documentation in the countries of origin within the established term taken into account?
2. Which public agencies, besides the National Directorate of Migration, are involved in the search for a response to the problem of Venezuelan migrant children with no documentation? What answers do you intend to offer to the families who cannot access the consular passport process to guarantee migratory regularization?

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<sup>39</sup> A/HRC/37/5 recommendation 107.29 “Enhance national efforts to combat discrimination, xenophobia and racism, in particular the discriminatory practices against migrants and people of African descent” and A/HRC/37/5 107.183 “Strengthen measures to ensure the human rights of migrants and their families.”

3. How do you justify the rejection of asylum applications and their replacement with precarious residency in the context of irregular entry control proceedings? How do you intend to deal with residency proceedings initiated under this logic?
4. Understanding that the State itself recognized that DNU 70/2017 was in violation of the guiding principles on migration matters, why does it not offer an ex officio review in the situations affected by the application of said DNU?
5. Regarding the expulsions ordered by the Supreme Court of Justice of the Nation, how do you explain the priority assigned to administrative regularity in matters of entry, above the State's obligation to call to remedy irregularities of that nature?
6. 6. How can you justify the requirement of a number of years of residence that expressly excludes, albeit not only, children and adolescents from access to contributory pensions contrary to the principle of non-discrimination?
7. 7. Are you considering the possibility of presenting alternatives to the DNI as a means of proof of residence as a requirement for access to social security programs? If so, what are they and what would be the procedure for obtaining them?

#### Recommendations:

1. That the State extends the term and relaxes the criteria to apply for Special Regularization Regimes to at least one year from the publication of the provision and remove clause number 5.
2. That the State commits to provide long-term regularization solutions, such as permanent residency, through ordinary procedures with special emphasis on migrants from countries that are not members of Mercosur.
3. The State designs a regularization mechanism with flexible criteria that takes into account the absence of regular channels during the period that borders were closed due to the pandemic, exempting those who have entered during that period from the requirement that they present regular entry stamps.
4. That the State addresses the problem of Venezuelan migrant children with a children's rights approach, facilitating migratory regularity and the exercise of rights, refraining from taking measures that endanger family unity.
5. That the State commits to reviewing mechanisms for migrants' access to vote in order to ensure the equal exercise of their rights and improve their access to political participation.
6. That the State reviews the asylum application procedures initiated as irregular entry control proceedings and establish mechanisms to facilitate regularization. In addition, that the State commits to uphold the procedures in force for requesting refugee status at the border and in the territory,

guaranteeing the right to seek asylum, desisting from any order to leave the territory under threat of an expulsion order, which have been made in such terms.

7. Faced with the derogation of DNU 70/2017 and the cases initiated and/or resolved during its validity, that the State ensures the review *ex officio*, for the purpose of updating the resolution criteria in line with the regulations in force, especially in cases of expulsions issued based on the derogated decree. In line with what was recommended in 2019 by the Committee on Migrant Workers.

8. That the State takes immediate steps to review the length of residence required for non-contributory social benefits for migrants, to bring the legislation into line with the provisions of the Convention.