

**ARGENTINA**

**IMMIGRATION**

# ARGENTINA'S MIGRATION SOLUTION

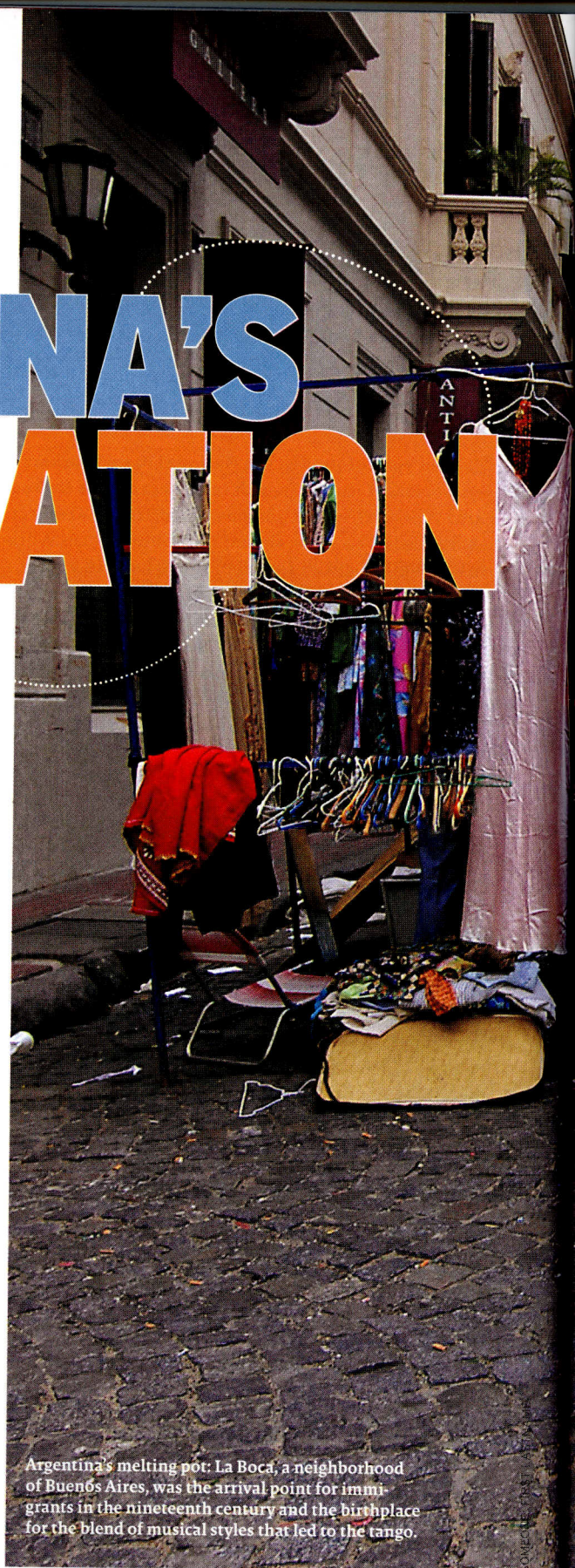
A revolutionary answer for  
immigration reform  
based on open dialogue  
and the recognition of  
migration as a human right.

**GASTÓN CHILLIER AND  
ERNESTO SEMÁN**

**M**ost Latin American countries have regarded immigration policy as a function of border protection, using approaches that emphasize security and law enforcement, including strict regulation of work and residency permits. Nevertheless, such policies have not only failed in recent years to curb the growth of undocumented migrants; they have also clashed with resolutions adopted in 2003 and 2008 by the Inter-American Court of Human Rights that guarantee migrant rights.

Argentina is a notable exception. Thanks to a law passed in 2004, it has emerged as a model for innovative immigration policymaking. The law incorporated the recognition of migration as a human right. But what really made it historic was the open, consultative process used to conceive, develop and pass the legislation.

How Argentina got there is an instructive story—and



Argentina's melting pot: La Boca, a neighborhood of Buenos Aires, was the arrival point for immigrants in the nineteenth century and the birthplace for the blend of musical styles that led to the tango.



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it may hold lessons for its neighbors and for other areas of the world.

### A COUNTRY OF IMMIGRANTS STRUGGLES WITH ITS LIMITS

As a country known both as a source and a destination for immigrants, Argentina has always carved out a special place for itself in Latin America. In the nineteenth century, it forged a national identity through an open-door immigration policy that was geared selectively toward European immigrants. But migration from neighboring countries such as Bolivia, Chile and Paraguay increased steadily to the point that—by the 1960s—the number of immigrants from its neighbors outpaced arrivals from Europe.

In response, Argentina imposed stricter controls on the entry and exit of foreigners, beginning with legislation introduced in 1966. The legislation established new measures for deporting undocumented immigrants.

In 1981, under the military dictatorship, legislative decrees that allowed the state to expel migrants were codified into law for the first time as Law 22,439, also known as *La Ley Videla* (named after the military dictator Jorge Rafael Videla, who was later convicted of human rights violations). The law contained several provisions that affected constitutional guarantees, including the right of authorities to detain and expel foreigners without judicial redress; the obligation of public officials to report the presence of unauthorized immigrants; and restrictions on their health care and education. For example, undocumented immigrants could receive emergency health care, but hospitals were then obligated to report them. The resolutions and decrees of the National Migration Office—first established in 1949—turned the office into a vehicle for the violation of migrant rights and precluded it from regulating immigration and addressing immigrants' status.

From the downfall of the military dictatorship in 1983 until 2003, congress failed to repeal *La Ley Videla* or enact an immigration law in accordance with the constitution and international human rights treaties recognizing migrant rights. In fact, the executive branch expanded the law's discriminatory features and pro-

moted the autonomy of the National Migration Office to establish criteria for admission and expulsion from the country without any legal oversight.

The continuation of *La Ley Videla* relegated close to 800,000 immigrants—most of whom came from neighboring countries—to “irregular” status, with serious sociopolitical consequences.

Efforts to rectify the situation at first met little success. In the absence of reform, Argentine immigration policy was based on individual agreements with countries like Bolivia and Peru to regulate immigrant flows. These agreements failed to address the larger realities of immigrant flows and Argentine authorities often expelled immigrants despite the treaties. As a result, courts repeatedly upheld detentions and expulsions sanctioned by the immigration authorities, with no formal mechanisms to ensure justice for immigrants. In turn, the high cost of filing or pursuing an appeal generally made this an unlikely option.

In 1996, this unjust and unsustainable situation led to the creation of the Roundtable of Civil Society Organizations for the Defense of Migrant Rights, a diverse coalition of human rights groups. The roundtable sought to counter xenophobic rhetoric from state ministries and from the president. It worked for migrant rights and included a diverse coalition of immigrant associations, religious groups, unions, and academic institutions. A key goal was to expose the contradictions and inconsistencies of *La Ley Videla* by sponsoring reports on human rights abuses of migrants, bringing cases to court and submitting complaints to the Inter-American Human Rights System.

In 2000, the organization outlined a specific agenda to repeal *La Ley Videla* and to pass a new immigration law that respected the rights of foreigners. Criteria for the new legislation included: administrative and judicial control over the National Migration Office; reform of deportation and detention procedures to guarantee due process; recognition of the rights of migrants and their families to normalize their immigration status; and elimination of discrimination and other forms of restrictive control in order to ensure access to constitutionally guaranteed social rights and services.

Representatives of the roundtable then began to meet weekly with politicians. They presented proposals to legislative committees (in particular the House Population Committee) and participated in public hearings. In the end, the group was instrumental in promoting public discussions and endorsing a bill by *Partido Socialista* Senator Rubén Gustiniani that ultimately passed in 2003

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with broad political support. This open consultative process ultimately provided the framework for then-President Néstor Kirchner and the National Migration Office to join other political forces in Congress to pass the bill.

Meanwhile, Latin American migration to Argentina has continued to rise, along with immigration from Eastern Europe, Asia and Africa. Census records from 2001—the latest year available—show that 4.6 percent of the 36 million Argentines were foreign-born and that 2.6 percent of the population was originally from a neighboring country.

### A PERFECT COMBINATION OF PROCESS AND GOALS

Enacted in January 2004, Law 25.871, or *Ley de Migraciones* (Migration Law), recognizes the human right to migrate and affirms that migration “is an essential and inalienable individual right to be upheld by the Argentine Republic based on principles of equality and universality.” To bring all immigrants out of the shadows, the law calls on the state to “make available all appropriate measures to normalize the immigration status of foreigners.” It is revolutionary both in Argentina and globally insofar as the economic, social and political rights granted to immigrants.

One of the major achievements of the immigration law and its regulatory decree has been to ensure that migrants have access to the judicial system during the immigration process. This stipulation was a longstanding goal of individuals and groups that supported the new legislation. Before immigration reform, several court decisions had established minimal protective mechanisms. But under the *Ley de Migraciones*, equal access to the judicial system acts as a check on arbitrary administrative decisions. Under the law, those facing deportation proceedings are guaranteed free legal aid and translation services.

Since passage of the law, the courts—under Article 61—have been in charge of ruling on the harshest sentence an immigrant can receive: deportation. Furthermore, new procedures were mandated to modify the process of detaining individuals awaiting deportation. A judge must now always hear the case, which can only

be requested by migration authorities and decided on by the courts once the deportation authorization has been completed.

The *Ley de Migraciones* also stipulates the right to family reunification—a hot button issue around the world—for migrants and their “parents, spouses, unmarried children or older children with disabilities.”

In addition, a new category of temporary residency was created for the vast majority of migrants living in Argentina, most of whom are South American nationals. This new residency category, which applies to immigrants from Mercosur and other associated countries, allows people to legalize their residence in Argentina. They don't need a special work permit or a tourist visa, only a willingness to live in Argentina. This is truly historic in a country like Argentina—a nation that denied migrants' basic rights for 40 years. It goes a long way toward resolving historical patterns of discrimination by helping migrants establish official status with only minimal requirements.

Besides these new specific guarantees, a key feature of the *Ley de Migraciones* is its recognition of equal guarantees for the social rights of migrants, including access



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to health services, education, legal aid, work, and social security. One article in the law specifically focuses on education, prohibiting the denial of admission to any school based on legal status. The principle of equal access is also reflected in an article on health care.

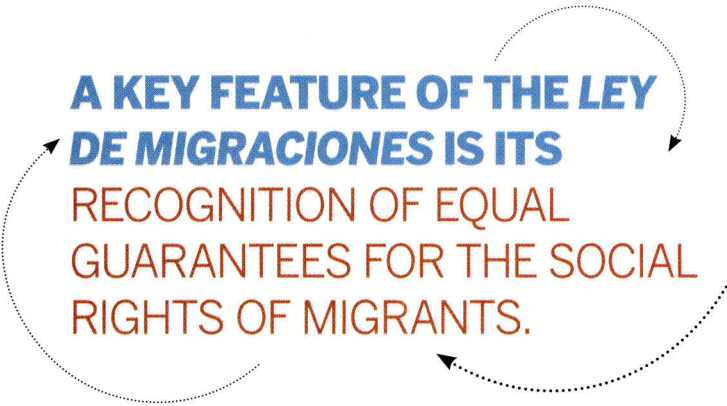
The importance of integration to community-wide cohesion and socioeconomic growth was not ignored by the authors of the bill. In fact, the approach to integration is not too different from how other countries continue to discuss it today.

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## IMMIGRATION

Article 14 declares the State “will favor initiatives to promote the integration of foreigners in their community of residence, especially those initiatives aimed at: the completion of Spanish language courses...; the dissemination of useful information for proper integration...especially in reference to rights and obligations; knowledge and appreciation of the cultural, recreational, social, and economic and religious traditions of immigrants; [and] organizing training courses for living in a multicultural society and for the prevention of discriminatory behavior for officials, public employees and private entities.”

Argentina’s achievements in migrant rights partly



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reflect the role that human rights organizations have played through international litigation, public debates and the drafting of key texts. But there is still much to be done to fully recognize the rights of migrants. Top concerns include: the absence of effective procedures to regulate migrants’ status in compliance with the new law; the need for better guarantees of access to social services; and the uneven application of the law regarding cases from Senegal and the Dominican Republic.

That is why the efforts of the roundtable did not end once the law was passed. The group continued to fight for a regulatory decree and the chance to correct certain aspects of the law.

In response, in June 2008, President Cristina Fernández de Kirchner formed an advisory committee for the regulation of the law, bringing together representatives of human rights organizations, the United Nations (UN High Commissioner for Refugees and the International Organization for Migration), religious groups, and the Latin American Center for Immigration Studies. The ad-

visory committee worked for five months in dialogue with national immigration authorities on the most contested parts of the *Ley de Migraciones*: to reduce administrative discretion to reject filing procedures; to align the work of the National Migration Office in accordance with the new law; and to add new measures not included in the first draft of the law. They also clarified the procedures for denial of entry at borders and notification of deportation processes and for reducing immigrant detentions during migration procedures. The deliberations resulted in a new text. On May 6, 2010, six years after the passage of the *Ley de Migraciones*, Argentina’s Executive signed a much-needed regulatory decree.

Today, there are more ways for migrants to receive a fair hearing in Argentina. In 2002, while the old immigration law was still in effect, the Law School of the University of Buenos Aires, together with the Center for Legal and Social Studies and the Commission for the Protection of Refugees, created a free legal clinic for migrants and refugees. With this clinic as a framework, in 2007 the National Public Defender’s Office, a constitutionally sanctioned body that guarantees access to the justice system, joined forces with human rights organizations to create the Commission for Migrants

and the Commission to Assist and Protect Refugees. The commissions established an agenda to meet the needs of migrant populations, including a key clause recognizing the rights of children without legal guardians.

Much remains to be done. Since the passage of the new immigration law, advisory mechanisms, legal sponsorship, and precedent established by Supreme Court decisions have initiated a new institutional framework for the defense of migrant rights using legal channels.

The lessons of the Argentine experience are valuable beyond its borders. Recognizing the importance of immigrants’ rights is essential to crafting new immigration policies in our region and elsewhere—unfortunately something often left out of the debate. The work of civil society groups was crucial.

While Argentina’s immigration legislation cannot be replicated exactly, how it was produced is worth studying. Every country will have to find its own humane path to address the new global reality: the migration of millions in search of better living conditions. 