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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Initial report submitted by the Argentine Republic under article 73 of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* **

Initial report

Introductory note

The Argentine Republic signed the Convention on 10 August 2004. The Convention was adopted by the National Congress and subsequently ratified on 23 February 2007.

This report has been drawn up in accordance with the Provisional Guidelines regarding the form and contents of reports to be submitted by States parties to the Convention (HRI/GEN/2/Rev.2/Add.1).

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

** This report is circulated in English, French and Spanish. The annex is circulated solely in the language of submission.

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I. General Information

Constitutional, legislative, judicial and administrative framework governing the implementation of the Convention, and any bilateral, regional or multilateral agreements in the field of migration entered into by the reporting State party

1. The legal system in force in the Argentine Republic consists of diversely ranked legal rules covering different areas. These rules as a whole are in keeping with the guidelines set out in the national Constitution.

2. Competence to conclude treaties lies with the executive branch of Government (article 99 (11) of the national Constitution). Nonetheless, between the signing of a treaty and the declaration of consent to be bound thereby, the national Constitution (article 75 (22)) provides for a substantive procedure to be performed by the legislative branch, namely "approving or rejecting treaties concluded with other nations and with international organizations", in view of the principle of the separation of powers and its correlative checks and balances. This procedure guarantees the participation of the representatives of the people and of the provinces in decision-making on matters that will be binding on the country.

3. Under article 31, unamended, of the national Constitution, treaties are the supreme law of the Nation. The Supreme Court, as interpreter of the constitutional provisions, had concluded that they are equal in rank to national Acts. This jurisprudence, which was expressed in the Martin and Company v. General Ports Administration decision of 1963, remained uncontested until 1992.

4. On 7 July 1992, the Supreme Court of Argentina, ruling in the case of Ekmekdjian v. Sofovich, modified this position, stating that "in our country international treaties take precedence over the national laws". This ruling took place before the constitutional reform of 1994. The Supreme Court, in its decision on an amparo application concerning the "right of reply" claimed by the plaintiff invoking the American Convention on Human Rights, based, on that occasion, its ruling on the provisions of the Vienna Convention on the Law of Treaties (ratified by Argentina on 5 December 1972 and made applicable nationally by Act No. 19,865). The Supreme Court stated this: "The Vienna Convention on the Law of Treaties is a constitutionally valid international treaty, which, in its article 27, provides that 'a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty'. The necessary application of this article requires the organs of the State of Argentina (...) to give precedence to treaties whenever they are in conflict with domestic law."

5. Following the August 1994 constitutional reform, article 75 (22) of the new national Constitution provides as follows: "Treaties and concordats take precedence over Acts. In the conditions of their validity, the American Declaration of the Rights and Duties of Man, the Universal Declaration of Human Rights, the American Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol thereto, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child have constitutional rank, do not abrogate any article of the first part of this Constitution, and shall be interpreted as complementary to the

rights and guarantees recognized thereby. They may be denounced, if necessary, only by the Executive, following approval by two thirds of the members of each Chamber. After being approved by Congress, other treaties and conventions on human rights shall require the vote of two thirds of the members of each Chamber in order to acquire constitutional rank."

6. Later, by Act No. 24820 of 30 April 1997, the National Congress granted constitutional rank to the Inter-American Convention on Forced Disappearance of Persons.

7. Moreover, by Decree No. 579/2003 of August 2003, the President of the Nation declared Argentina's accession to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which had been adopted by the National Congress under Act No. 24584 of 1995. The preamble to the Decree states that "the Argentine Republic has embarked on a new stage in which respect for essential human rights, for democratic institutions and for social justice has become the fundamental pillar of Government action". It also states that "it is the primary intention of the national Executive to contribute to creating a nation based on full respect for human rights" and that "our country has given constitutional status to various international documents whose main aim is to protect the dignity and value of the human person".

8. On 20 August 2003, the National Congress adopted Act No. 25778, promulgated on 2 September of that year, giving constitutional status to the above-mentioned Convention, in accordance with the procedure established in article 75 (22) of the national Constitution.

9. From the foregoing, it may be concluded that the international human rights instruments concerned are on an equal footing with the provisions of the national Constitution and take precedence over national and provincial legislation. Various decisions of the Supreme Court confirm that pre-eminence. Likewise, in accordance with the provisions of articles 116 and 117 of the national Constitution, the Supreme Court has judged that international custom and the general principles of law that are the sources of international law according to article 38 of the Statute of the International Court of Justice are an integral part of the legal system. For that reason, the Supreme Court has in many cases accorded merit to public international law and to the general principles of international law, implementing various international law rules.

10. The rights and guarantees enshrined in the national Constitution since its adoption in 1853 clearly reflect the importance of immigration and the Argentine Nation's spirit of acceptance. To begin with, the Preamble, refers to "promoting the general welfare and securing the blessings of liberty to ourselves, to our posterity, and to all human beings in the world who wish to dwell on Argentine soil".

11. Article 20 of the national Constitution explicitly underscores the equality of the civil rights enjoyed by immigrants and citizens, and is clearly worded as follows: "Foreigners enjoy within the territory of the Nation all of the civil rights of citizens and may exercise their industry, trade and profession; own, buy and sell property and assets; navigate the rivers and coasts; practice freely their religion; make wills and marry in accordance with the law. They are not obliged to accept citizenship or pay extraordinary compulsory taxes. They may obtain naturalization papers by residing for two consecutive years in the national territory. The authorities, however, may shorten this period upon request, where the applicant claims and proves having rendered services to the Republic". This article has been a pillar of national immigration policy.

1. Implementing authorities for the protection of human rights

Judicial authorities

12. In the Argentine judicial system, the administration of justice is a role performed in parallel by the Nation and the Provinces. In particular, under articles 5 and 123 of the national Constitution, each province enacts its own constitution in accordance with the principles, declarations and guarantees of the national Constitution and ensures its own administration of justice. The provinces elect their own provincial officers and judges, without intervention of the Federal Government (article 122). At the same time, under article 31 of the national Constitution, the national Constitution itself, the national laws enacted by Congress in pursuance thereof, and treaties with foreign powers are the supreme law of the Nation; and the authorities of each province are bound thereby, notwithstanding any provision to the contrary included in the provincial laws or constitutions.

13. The judiciary of the individual provinces is responsible for the administration of ordinary justice within the provincial territory, by application of the codes specified in article 75 (12) of the national Constitution, namely the Civil, Commercial, Criminal, Mining, Labour and Social Security Codes, depending on the cases or persons coming under the respective jurisdictions.

14. At the level of national justice, article 116 of the national Constitution provides that the Supreme Court and the lower courts of the Nation are empowered to hear and decide all cases arising under the national Constitution and the laws of the Nation, with the exception of matters coming under provincial jurisdiction. Under article 117 of the national Constitution, appellate jurisdiction in the aforementioned cases is exercised by the Supreme Court.

Administrative authorities

15. In the national system, two areas of human rights have been established within the Executive, one initially under the Ministry of the Interior and currently under the Ministry of Justice, Security and Human Rights, and the other in the Ministry of Foreign Relations, International Trade and Religion. This initial organization scheme has lately received substantial contributions, which have enriched and diversified the possibilities for adequately safeguarding the full force of human rights in the country.

National Institute against Discrimination, Xenophobia and Racism

16. The National Institute against Discrimination, Xenophobia and Racism (INADI) is a decentralized agency set up in 1995 pursuant to Act No. 24515, and began work in 1997. Since March 2005, as prescribed by Presidential Decree No. 184, the Institute has come under the jurisdiction of the Ministry of Justice and Human Rights.

17. The activities of INADI concern all persons whose rights are affected by discrimination based on their ethnic origin, nationality, political opinions, religious beliefs, gender, sexual orientation, possible inability or disease, age or physical appearance. The Institute aims at providing such persons with the same rights and guarantees enjoyed by society as a whole, namely with an egalitarian treatment.

18. The INADI Governing Board is composed by members of the Institute and includes representatives of the Ministries of Foreign Affairs, International Trade and Religion; Education; Justice, Security and Human Rights; and the Interior; and three NGOs, namely the Permanent Assembly for Human Rights (APDH), the Delegation of Argentine Jewish Associations (DAIA) and the Federation of Argentine Arab Institutions (FEARAB).

19. Moreover, article 14 of the Act creating INADI provides for the establishment of an Advisory Board consisting of ten representatives of NGOs with a recognized record in promoting human rights and combating discrimination, xenophobia and racism. The members of the Advisory Board are appointed on an honorary basis for a four-year term.

20. INADI has a complaints centre to receive and evaluate complaints and assist and advise persons or groups considering themselves victims of discriminatory practices. The centre proceeds by checking the veracity of the allegation, and seeking a peaceful settlement of the dispute through legal advice, administrative management, mediation and free legal aid. Since its creation, INADI has received approximately 4,000 complaints. It is also responsible for compiling a register of all discrimination cases nationwide for statistical purposes

21. As already mentioned, one noteworthy feature of INADI is the active participation of NGOs in its work.

22. Under the Act creating INADI, the Institute performs the following functions:

(a) Acting as the implementing body for anti-discrimination legislation, ensuring that it is applied and its goals are met;

(b) Disseminating the principles governing its activity;

(c) Planning and promoting information campaigns designed to ensure the advancement of social and cultural pluralism and the elimination of discriminatory, xenophobic and racist attitudes;

(d) Codifying and updating information on the relevant international law and foreign legislation and drawing up comparative reports in that area;

(e) Receiving, centralizing and registering complaints regarding discriminatory, xenophobic or racist acts;

(f) Setting up a registry of documents, evidence and facts related to the objectives of the Institute;

(g) Providing a free comprehensive advice service to persons or groups subject to discrimination, xenophobia or racism;

(h) Providing free legal aid and, at the request of the party concerned, instituting judicial or administrative proceedings on matters under its jurisdiction;

(i) Giving technical advice to the Public Prosecutor's Office and the courts;

(j) Informing public opinion about discriminatory, xenophobic or racist attitudes and conduct on the part of public bodies, private organizations or persons;

(k) Identifying and, where appropriate, denouncing to the competent authorities the presence in the country of persons who, during or after World War II, participated in the extermination of peoples or in the death and persecution of persons or groups because of their ethnic origin, religion, nationality or political views;

(l) Instituting and expediting judicial proceedings for emergency protection measures under the national Constitution;

(m) Establishing links for cooperation with national, foreign, public or private bodies pursuing objectives similar to the Institute's;

(n) Proposing to the appropriate body the conclusion of new extradition treaties;

(o) Concluding agreements in order to attain the goals assigned to the Institute.

23. One of the initiatives undertaken within INADI is the Civil Society Forum on Migrants and Refugees. Such INADI forums are spaces not merely for citizens to meet and establish contacts, but also for training in anti-discrimination policies and action, joint management of INADI's own initiatives, and coordination with other ministries and/or provincial and municipal authorities.

24. The forums pursue the following objectives:

- Formulating proposals for anti-discrimination activities;
- Monitoring the State's public policies on anti-discrimination issues;
- Monitoring and participating in the implementation of the National Plan against Discrimination;
- Participating in research and training activities carried out by INADI;
- Cooperating in building a national system for complaints, follow-up and mediation within INADI.

Human Rights Secretariat of the Ministry of Justice, Security and Human Rights

25. The main task of the Secretariat is to promote and protect human rights in the country. The Secretariat engages in the activities described below.

26. The Complaints and Procedures Programme consists of receiving, from individuals, complaints relating to conflicts that may involve human rights violations, advising complainants and forwarding cases to the competent national authority.

27. The Legislation Development Programme is aimed at participation in and assistance to the congressional human rights commissions.

28. The Institutional Relations Programme is aimed at fostering and maintaining good relations with domestic (public and private) and foreign human rights bodies.

29. The Federal Human Rights Council is responsible for linking and coordinating policies for promoting and guaranteeing human rights between the national Government and the provincial governments. The Council ensures efficient coordination and a free-flowing exchange of communication that provides for centralized policy design combined with decentralized action, taking account of the specific situation in each province;

30. Within the Historical Reparation Programme, the Office of the Secretary for Human Rights is responsible for processing the benefits due to former internees detained by order of the Executive and civilians tried by military courts prior to the restoration of democracy on 10 December 1983, and to the persons succeeding to the rights of persons who disappeared.

31. The National Commission on the Right to an Identity seeks to expedite the search for children who disappeared and to determine the whereabouts of abducted and missing children whose identities are unknown, children born to mothers illegally deprived of their liberty, and other children whose identities are unknown because for various reasons they were separated from their biological parents.

32. The National Commission on the Enforced Disappearance of Persons (CONADEP) is responsible for preserving and updating the CONADEP files.

Human Rights Directorate of the Ministry of Foreign Relations, International Trade and Religion

33. The primary responsibility of this Government agency is to identify, develop and propose foreign policy plans, programmes, projects and objectives in the field of human

rights and to assist in the conduct of foreign policy in these areas within international organizations, entities or ad hoc commissions.

34. The Directorate also participates in examining how legislation may be adapted to international commitments undertaken in the field of human rights, in concluding and signing treaties and in determining the eligibility of refugees.

35. The Directorate has been designated Argentina's chief representative to meetings of all United Nations bodies and in the Organization of American States (OAS) in the area of human rights

Parliamentary commissions

36. Special bodies responsible for human rights have been established within the legislative branch of Government. The National Senate, comprising representatives of 23 provinces and the Federal Capital, created in December 1983 a Commission on Rights and Guarantees. That example was followed by the House of Representatives on 30 September 1992. Both commissions include parliamentarians belonging to all political parties represented in the Parliament.

37. These commissions are responsible for rendering opinions on all matters related to the implementation, promotion, defence and dissemination of human rights, including civil, political, economic, social and cultural rights, and on projects related to the full exercise of the rights and guarantees recognized by the national Constitution and the country's legislation.

Ombudsman

38. On 1 December 1993, the National Congress adopted Act No. 24284 creating the Office of the Ombudsman within the legislative branch. The mandate of the Ombudsman, who operates without receiving instructions from any Government body, consists in protecting the rights and interests of persons and of the community against national public administration acts, actions or omissions. One of the Ombudsman's duties is to launch investigations, on his or her initiative or at the request of a third party, into public administration acts which may infringe those rights and interests, including extended or collective interests.

39. In the Argentine Republic, the City of Buenos Aires had already had experience with a human rights procurator. The national Constitution reform of 22 August 1994 introduced a new article regarding the Ombudsman.

2. Legislative framework for the implementation of the Convention

40. Immigration is a fundamental issue in the Argentine Republic. During the last century, the country was the destination of one of the world's largest migratory waves, to the extent that persons born outside the national borders accounted for 30 per cent of the population, 27 per cent of which were of European origin, while 2.5 and 0.5 per cent came from, respectively, South American and other countries.

41. In view of the need to design new types of immigration management conducive to integration, two distinct approaches have been considered, namely making it easier for citizens of the countries of the region to become residents, and recognizing the rights of immigrants in the country by adopting the highest international protection standards, confirming that immigrants and citizens enjoy equal rights and treatment, and ensuring that even persons whose immigration status is irregular enjoy full access to public health and education services.

42. Accordingly, Act No. 25871 was adopted, based on the notion that immigration policy should adequately safeguard all persons' entitlement to migration as a fundamental and inalienable right and promote the integration of immigrants into the country's social structure.

43. Act No. 25871 lays down the scope of implementation and the objectives of Argentina's immigration policy, which is aimed at the social integration of foreigners on an equal footing with Argentine citizens and, primarily, at ensuring that immigrant workers and their families actually exercise of the rights enshrined in article 20 of the national Constitution.

44. At the regional level, the Argentine Republic participates in the integration process pursued by the Southern Common Market (MERCOSUR).

45. Currently, migratory flows are mainly regional and consist primarily of three national groups, namely Paraguayans, Bolivians and Peruvians (in that order). These groups account for almost 90 per cent of applications for residence filed on the basis of a MERCOSUR nationality in the last three years.

46. The issue of migration has been on the MERCOSUR agenda since that regional bloc's inception in 1991, when the Treaty of Asuncion was concluded. MERCOSUR consists of the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay as member States, while the Plurinational State of Bolivia, the Republic of Chile, the Republic of Colombia, the Republic of Ecuador, the Republic of Peru and the Bolivarian Republic of Venezuela participate in the bloc as associate members.

47. In its capacity as the MERCOSUR governing body, the Common Market Council (CMC) is responsible for leading the integration process at the political level and making decisions in order to ensure the attainment of the goals established by the Treaty of Asuncion. On 17 December 1996, by Decision No. 07/96, CMC created the Meeting of Ministers of the Interior of MERCOSUR and its Associate States, a forum for discussing the issues of migration and security and other matters within the scope of those ministries in order to promote cooperation, policy coordination and the development of common mechanisms for strengthening regional integration. The first qualitative breakthrough regarding migration in the region was achieved within the framework of that Meeting, through the adoption, in 2002, of the Agreement on Residence for Citizens of MERCOSUR Member States, which constitutes the region's most important instrument in that area, was endorsed by the Presidents of the member States and the Chief Executives of Bolivia and Chile, and is considered as a landmark in the area of integration.

48. Although migration matters were initially addressed in conjunction with security issues, the Meeting of Ministers of the Interior has in recent years separated these two areas, creating two distinct fields, to be treated by migration and security specialists, respectively. As a rule, the two groups meet separately. Exceptionally, however, where an issue so requires, they cooperate in seeking solutions fitting both perspectives. This mode of operation has led to significant progress, including in particular the adoption of important declarations and multilateral agreements for enhancing freedom of movement and human rights protection and for strengthening regional cooperation in combating such crimes as, inter alia, smuggling migrants and trafficking in human beings.

49. Currently, ten countries participate in the Meeting of Ministers of the Interior of MERCOSUR and its Associate States. The instruments negotiated in that Meeting are binding on the signatory countries and trace the general outline of migration policy in South America.

Act No. 25871 of 20 January 2004 on migration

50. This new Act sets high standards for the protection of migrants' rights and lays the basis for public policies for the social integration of immigrants. It stipulates, inter alia, that all foreigners in the Argentine Republic, even those with irregular immigration status, enjoy the right to health and education. The State also guarantees the immigrants' right to family reunification with their parents, spouses and children, since the family is recognized as a necessary and important source of support for every migrant.

51. The Act is based on regional historical, geographic and economic circumstances and, in the context of regional integration, acknowledges Argentina's tradition as a migrant-hosting country and establishes procedures that facilitate the migrants' access to regular immigration status.

52. Accordingly, the Act on migration:

- Reaffirms that immigrants must be treated on an equal footing with Argentine citizens;
- Confirms the immigrants' rights and equal access to social services, public goods, health, education, justice, work, employment and social security;
- Establishes the immigrants' right to be informed of their rights and obligations;
- Enables immigrants to participate or be consulted in decision making regarding public life and the administration of the communities where they reside;
- Guarantees the access of foreigners, regardless of their immigration status, to education and health.

53. The Act expresses the will of the State to implement the measures necessary for regularising the status of all immigrants residing in Argentine territory.

54. The Act introduced the "MERCOSUR nationality criterion" for admitting foreigners into the country into Argentine legislation on immigration. To meet the criterion, it suffices to be a citizen of a MERCOSUR member State or associate State (Brazil, Paraguay, Uruguay, Bolivia, Colombia, Chile, Ecuador, Peru or Venezuela).

55. Pursuant to the Act, in order to be able to reside in Argentina, MERCOSUR citizens may avail themselves of the nationality criterion without needing any recognition of their activity or the fulfilment of any other immigrant admission criterion, for instance being a worker, student, rentier or investor. Their nationality suffices.

56. In that spirit, after the adoption and entry into force of the Act, a number of provisions were adopted in order to regularize the status of persons residing illegally in Argentina. Such legislation has been based on the view that obstacles in migration procedures compound the problem of irregularity.

57. Implementing regulations for the Act are being drawn up. Substantial differences from the preceding Act, which had been in force for over 20 years, make that task all the more difficult, since new types of situations must be addressed. All relevant Government sectors and NGOs working in the field are being consulted.

58. Notwithstanding the factors outlined in the preceding paragraph and until the new regulations are adopted, the Executive has adopted a series of measures to ensure that the principles enshrined in Act No. 25871 are put into effect without undermining the spirit of the Act.

Decree No. 836/2004 of 7 July 2004

59. The National Programme for the Standardization of Immigration Documents was created pursuant to this decree (article 10).

60. The Programme is aimed at:

(a) Creating the framework of implementation of new migration policies conducive to the adaptation and integration of the immigrant population (article 11);

(b) Regularizing the status of immigrants (article 11).

61. The Programme focuses on respect for the human rights of migrants in line with United Nations international agreements and International Labour Organization (ILO) conventions and consolidates the regional policy pursued by MERCOSUR.

Decree No. 1169/2004 of 6 September 2004

62. Issued within the framework of Decree No. 836/2004 creating the National Programme for the Standardization of Immigration Documents, Decree No. 1169/2004 consisted in a programme for the regularization of the immigration status of citizens of countries outside MERCOSUR, who on 30 June 2004 actually resided within the national territory.

63. Numerous requests by Asians for the regularization of their immigration status were treated within the framework of the above measure.

64. Moreover, the above instrument suspended, for the period of implementation of the special regime in question, the "measures of expulsion or injunction and discontinued such measures already taken, confirmed or authorized in the country with respect to foreigners whose immigration status was covered by the provisions of the decree [...]".

Decree No. 578/2005, of 2 June 2005

65. As a second stage of the National Programme for the Standardization of Immigration Documents, the National Directorate of Migration (DNM) was instructed to proceed with the regularization of the immigration status of foreigners who are nationals of a MERCOSUR member State or Associated State (article 2).

National Programme for the Standardization of Immigration Documents

66. As already mentioned, the National Programme for the Standardization of Immigration Documents was divided into two stages, as follows:

- The first stage, established by Decree No. 1169/2004, allowed regularizing the immigration status of citizens of countries outside MERCOSUR, mainly Asians;
- The second stage was implemented by launching the "Patria Grande – MERCOSUR" programme.

Procedure

67. The immigrant appears at a collaborating social establishment (a municipality, NGO or consulate) in order to have his or her identity established and fill out a sworn statement form, which is transmitted to DNM by Internet.

68. The collaborating establishment immediately issues a provisional residence certificate (a "pending residence request" certificate), which enables the immigrant to work, study and enter or leave the country. As from that moment, the immigrant's status is regularized.

69. Once DNM has processed the information concerning provisional residence certificate holders, the immigrant is summoned to establish that he or she has no criminal record and to pay the required fees.

70. The immigrant thereby obtains a temporary residence permit for two years, after which he or she may be granted permanent residence.

Agreement on Residence for MERCOSUR Citizens

71. In 2002, the Meeting of Ministers of the Interior submitted to CMC for consideration draft Agreements No. 13/02 on "Residence for Citizens of MERCOSUR Member States" and No. 14/02 on "Residence for Citizens of MERCOSUR Member States, Bolivia and Chile", which were adopted at the twenty-third meeting of CMC, held in Brasilia, Brazil, on 6 December 2002.

72. The adoption of the two agreements was prompted by the need to strengthen and deepen further the integration process through the implementation of a policy of flexible mechanisms for access to regularized immigration status with a view to the free movement of persons in the region in the future. To that end, it was agreed that "the citizens of a member State or associated State who wish to reside in the territory of another member State or associated State may be granted legal residence there upon establishment of their nationality". It is also provided that persons having obtained a residence permit pursuant to the agreements have the "right to enter, stay in, transit through and leave freely the territory of the receiving country" and "to engage in any activity, on the basis of self-employment or remuneration by a third party, under the same conditions as the citizens of the receiving countries, in accordance with the law of the given country".

73. The two instruments list a series of rights of immigrants and the members of their family, including in particular the following:

- *Equal rights*: Nationals of member States and their families who have obtained a residence permit enjoy the same civil, social, cultural and economic rights and freedoms as the nationals of the receiving country, and in particular the right to work and to engage in any legal activity in accordance with the law; to petition the authorities; and to enter, stay in, transit through and leave the territory of member States; and freedom of association for lawful purposes and of religion;
- *Family reunification*: Family members not nationals of a member State are granted a residence permit for the same period as the residence permit of the person whose dependents they are;
- *Treatment on an equal footing with local citizens*: Within the territory of member States, immigrants enjoy a treatment not less favourable than the one reserved to the citizens of the receiving country with regard to labour legislation, especially in respect of remuneration, working conditions and social insurance;
- *Commitment to social welfare*: Member States must examine the possibility of concluding reciprocal agreements in the area of social welfare;
- *Right to send remittances*: Immigrants in member States may freely transfer to their country of origin their personal income and savings, particularly funds necessary for the livelihood of their relatives, in accordance with the regulations and the domestic legislation of each member State;
- *Rights of immigrants' children*: Immigrants' children born in the territory of a member State are entitled to a name upon registration of their birth and to a nationality, in accordance with the respective domestic legislation. They also enjoy, in the territory of member States, the fundamental right of access to education on an

equal footing with the citizens of the receiving country. They may not be denied access to pre-school education establishments or public schools and such access may not be restricted on the grounds that their parents happen to be in an irregular situation in the country.

74. The Agreements also establish various cooperation mechanisms designed to prevent, detect and punish the illegal employment of nationals of member States by individuals or legal entities. Such measures "shall not affect the rights that immigrant workers may have as a result of the work performed under such conditions". Lastly, both Agreements provide that they are to be implemented "without prejudice to a member State's regulations or domestic provisions which are more favourable to the immigrants".

Declaration of Santiago on Migration Principles

75. A special Meeting of the Ministers of the Interior of MERCOSUR, Bolivia, Chile and Peru, held in Santiago, Chile, on 17 May 2004, addressed problems affecting the region as a whole in the area of migration. At the end of the meeting, office holders of the countries of the bloc, seven at that time, signed the Declaration of Santiago on Migration Principles, premised on the recognition of the contributions of immigrants to the development of the signatory countries and reaffirming their countries' commitment to respecting the immigrants' human rights.

76. In the Declaration, the signatories underscored that the region's migration issues should be addressed "through open multilateral dialogue mechanisms as a way of strengthening the integration process"; that "MERCOSUR must reaffirm to the world that it aspires to a new migration policy with the ethical dimension of respect for human rights within the framework of international relations between countries"; that the "effectiveness of migration policy will depend on its adaptation to the regional and international reality and on realizing that regularizing the status of immigrants is the only way of ensuring their full integration into the receiving society"; that the "treatment of nationals of MERCOSUR member States and associate States in third countries must reciprocate the treatment reserved to nationals of those countries in the MERCOSUR territory"; and that "the MERCOSUR member States and associate States are responsible for coordinating their efforts to combat and prevent trafficking in human beings and the abuses brought about by illegal immigration in the region".

77. They also acknowledged "the substantial contribution of immigrants" to their States' development, reaffirming their intention to continue "to receive immigrants, safeguard their human rights and ensure that they fully enjoy the rights enshrined in the relevant international treaties in force". They decided to coordinate police and judicial measures in order to combat "the smuggling of immigrants, trafficking in human beings, trafficking in minors and other forms of transnational crime". They agreed on the need to strengthen initiatives "facilitating and regulating migratory flows" in the region and committed themselves to ensuring respect for the immigrants' human rights, confirming their States' resolve "to offer and promote international protection for refugees". They requested countries not belonging to MERCOSUR to extend to the region's emigrants "a fair and humanitarian" treatment similar to the treatment reserved to their own citizens. Moreover, they acknowledged the States' right to engage in adequate border control but "without treating irregular immigration as a criminal offence" and condemned the practices of xenophobia, group or mass deportation and detention without legal authorization.

78. Lastly, they reaffirmed the promotion of initiatives to facilitate migratory flows between the region's countries, noting that "regularizing the status of immigrants is the only way of ensuring their full integration into the receiving society", and stressed "the importance of family reunification, which is crucial to the immigrants' full stability, in view of the role of the family as the foundation of society".

79. The Declaration of Santiago on Migration Principles has been the basis for negotiations initiated by MERCOSUR with the European Community towards a future agreement between the two regional blocs in the area of migration.

80. The foregoing information shows that one of the premises of the current migration policy of the Argentine Republic is the existence of rights which are fundamental by virtue of a person's humanity, not his or her place of birth; and that the regularization of immigrants is a prerequisite for their full integration into the receiving society.

81. The Argentine Republic makes a special effort to promote and raise the quality of life of its citizens and to ensure social justice and equity in the distribution of the wealth generated.

3. Information on the characteristics and nature of the migration flows (immigration, transit and emigration) in which the State party concerned is involved

82. Since more than 80 per cent of migrants currently received by Argentina come from MERCOSUR member States and associate States, the Programme has focused on the regularization of MERCOSUR nationals.

83. As stated earlier, the Patria Grande Programme consisted of two stages, the first of which allowed regularizing the immigration status of approximately 13,000 nationals of citizens of countries outside MERCOSUR, while the second stage consisted in the regularization of MERCOSUR nationals.

84. In the period between 17 April 2006, when the second stage entered into force, and 31 December 2008, the "Patria Grande – MERCOSUR Programme" made it possible to regularize 423,711 MERCOSUR immigrants who, until then, had been living illegally in Argentine territory.

Nationality	*Procedures launched*	*Percentage*	*Procedures concluded*	*Percentage*
Paraguayan	248 086	58.6	88 315	53.1
Bolivian	105 017	24.8	47 470	28.6
Peruvian	47 464	11.2	22 394	13.5
Uruguayan	10 790	2.5	3 889	2.3
Chilean	5 360	1.3	1 720	1.0
Brazilian	4 600	1.1	1 376	0.8
Colombian	1 247	0.3	548	0.3
Ecuadorian	930	0.2	414	0.2
Venezuelan	217	0.1	101	0.1
Total	**423 711**	**100.0**	**166 228**	**100.0**

Patria Grande – MERCOSUR

National Programme for the Standardization of Immigration Documents

Procedures of the first stage (16 February 2006 – 31 December 2008) concerning immigrants having entered the country prior to 17 April 2006

85. This figure does not represent the total number of immigration regularizations of MERCOSUR nationals in Argentina. As the Act on migration provides for MERCOSUR nationality as one of the admission criteria, 227,238 more immigrants were received on that basis in the period 2006 – 31 December 2008 pursuant to the Act. This brought the number

of procedures launched for MERCOSUR nationals within a period slightly longer than two years to 650,949 (DNM data as at 31 December 2008).

Residence authorizations by ordinary procedure - Nationality criterion, Act No. 25871

Period 2006-2008 (excluding procedures under Patria Grande)

Nationality	*Procedures launched*	*Percentage*	*Procedures concluded*	*Percentage*
Paraguayan	47 055	20.7	74 583	39.4
Bolivian	87 860	38.7	37 336	19.7
Peruvian	48 455	21.3	38 053	20.1
Chilean	10 815	4.8	10 673	5.6
Uruguayan	6 417	2.8	5 044	2.7
Brazilian	8 650	3.8	9 028	4.8
Colombian	11 198	4.9	9 088	4.8
Ecuadorian	3 992	1.8	3 187	1.7
Venezuelan	2 796	1.2	2 421	1.3
Total	**227 238**	**100,0**	**189 413**	**100,0**

Total number of residence authorizations, 2006-2008

Ordinary procedures (Act No. 25871) and Patria Grande - MERCOSUR

Residence authorization procedures launched and concluded on the basis of MERCOSUR nationality, including the Patria Grande Programme and ordinary procedures (Act No. 25871).

Nationality	*Procedures launched*	*Percentage*	*Procedures concluded*	*Percentage*
Paraguayan	295 141	45.3	125 651	35.3
Bolivian	192 877	29.6	122 053	34.3
Peruvian	95 919	14.7	60 447	17.0
Chilean	16 175	2.5	12 393	3.5
Uruguayan	17 207	2.6	8 933	2.5
Brazilian	13 250	2.0	10 404	2.9
Colombian	12 445	1.9	9 636	2.7
Ecuadorian	4 922	0.8	3 601	1.0
Venezuelan	3 013	0.5	2 522	0.7
Total	**650,949**	**100.0**	**355,640**	**100.0**

Functioning of the "Patria Grande - MERCOSUR Programme"

86. The second stage of the National Programme for the Standardization of Immigration Documents, usually referred to as "Patria Grande – MERCOSUR Programme ", was designed to regularize the status of migrant MERCOSUR nationals who had entered Argentine territory prior to 17 April 2006 (date on which the programme was launched) and had been residing in Argentine territory illegally.

87. For the programme to succeed, the Government had to drum up support, while the Church, trade unions, immigrants organizations and national NGOs, which ceased to

confine themselves to denouncing or defending the rights of immigrants and became key actors in the process, responded by offering cooperation.

88. These organizations were designated Collaborating Social Institutions, and 569 such units, including State bodies and NGOs, signed a contract with DNM.

89. To obtain a permit, applicants need only to show that they are nationals of a member State or an associate State of MERCOSUR and have no criminal record. They then receive a temporary residence permit for two years, after which they be granted permanent residence

90. Implementation of the Patria Grande Programme in the Argentine Republic earned commendations and support from the other members and associate members of MERCOSUR. A declaration to that effect was signed at the Meeting of Ministers of the Interior, who undertook to adopt similar procedures.

91. In summary, the objective has been to facilitate access to residence and to recognize rights for the immigrants, regardless of their immigration status, as follows:

(a) The National Directorate of Migration (DNM) approaches the immigrant. There is cooperation with Provincial States, municipalities and NGOs. They inform the immigrant on the benefits to be derived from the programme and issue the first certificate that regularizes his or her immigration status in the country.

(b) Participation of diplomatic representations of the countries of origin: In order to support and to facilitate the obtention of documents by their compatriots, such representations have sought to reduce the costs and time required for issuing identity documents. Some actually participate in the programme as collaborating social institutions.

(c) Simple and exclusively personal procedures: The sole requirements are identity documentation and lack of a criminal record.

(d) Participation of religious organizations, unions and NGOs: Such bodies cooperate by providing information to the migrants and registering them through the Internet.

II. Information in relation to each of the articles of the Convention

A. General Principles

1. Articles 1 and 7 of the Convention: Non-discrimination

92. Enshrined in the Universal Declaration of Human Rights, this right establishes equality among human beings and calls for the equal treatment of and respect for all persons. In Argentine legislation, the Declaration has constitutional rank, inasmuch as it has been part of the national Constitution (under article 75 (22)) since the constitutional reform of 1994.

93. The rights enjoyed by the inhabitants of Argentina are enshrined in articles 14 and 14 bis of the national Constitution, which are worded as follows:

> "Article 14. All inhabitants of the Nation are entitled to the following rights, in accordance with the laws regulating the exercise thereof: to work and perform any lawful industry; to navigate and trade; to petition the authorities; to enter, stay in, transit through and leave the Argentine territory; to publish one's ideas through the

press without previous censorship; to use and determine the use of one's property; to associate for useful purposes; to profess freely one's religion; to teach and to learn."

Article 14 bis. Work in its various forms shall be protected by law, which shall ensure to workers decent and equitable working conditions; a limit to daily working hours; paid rest and vacation; a fair remuneration; an adjustable minimum vital wage; equal pay for equal work; participation in the profits of enterprises, with control of production and collaboration at management level; protection against arbitrary dismissal; stability for those in the civil service; and free and democratic labour union organizations recognized by mere registration in a special record.

Trade unions are hereby guaranteed the right to enter into collective labour agreements; to resort to conciliation and arbitration; and to strike. Union representatives shall enjoy the guarantees necessary for carrying out their union tasks, and safeguards as to the stability of their employment.

The State shall grant social security benefits. Social security shall be integral and may not be waived. In particular, the law shall establish compulsory social insurance under the responsibility of national or provincial entities with financial and economic autonomy, administered by the interested parties with State participation, with no overlapping of contributions; adjustable retirements and pensions; full family protection; protection of family assets; family allowances and access to decent housing."

94. The term "inhabitant" refers to nationals and foreigners residing in the national territory and intending to stay in it, even if they have not taken up residence, with all its legal consequences.

95. As already mentioned in the introduction to this report, under article 20 of the national Constitution, quoted below, there is no differentiation with respect to the civil rights enjoyed by Argentine nationals and foreigners residing in Argentine territory:

"Article 20. Foreigners enjoy within the territory of the Nation all of the civil rights of citizens and may exercise their industry, trade and profession; own, buy and sell property and assets; navigate the rivers and coasts; practice freely their religion; make wills and marry in accordance with the law. They are not obliged to accept citizenship or pay extraordinary compulsory taxes. They may obtain naturalization papers by residing for two consecutive years in the national territory. The authorities, however, may shorten this period upon request, where the applicant claims and proves having rendered services to the Republic."

96. Act No. 23592, in effect since 1988, provides for penalties for those who arbitrarily prevent the full exercise of the fundamental rights and guarantees enshrined in the national Constitution.

97. Discrimination is considered as a circumstance aggravating the commission of any offence.

98. Under article 1 of Act No. 23592, "any person who arbitrarily impedes, obstructs, restricts or in any way impairs the full exercise, on an equal footing, of fundamental rights and guarantees recognized in the national Constitution shall be required, at the request of the aggrieved party, to annul or cease to perform the discriminatory act and to repair the moral and material damage caused." Moreover, under the second paragraph of the same article, "account shall be taken, in particular, of discriminatory acts or omissions motivated, inter alia, by considerations of race, religion, nationality, ideology, political or trade union affiliation, gender, financial situation, social status or physical characteristics." Furthermore, article 2 of the same Act increases "the minimum penalty by one third and the maximum penalty by half for any crime ... whose commission involves persecution or

hatred of a race, religion or nationality or aims to destroy wholly or partly a national, ethnic, racial or religious group".

99. Article 3 of Act No. 23592 provides for "prison terms of between one month and three years for anyone who is a member of an organization or produces propaganda based on ideas or theories affirming the superiority of a race or group of persons of a particular religion, ethnic origin or colour in order to justify or encourage racial or religious discrimination in any form". It also provides for penalties for "anyone who in any way encourages persecution or hate of a person or group of persons on account of their race, religion, nationality or political ideas".

2. Article 83: Right to an effective remedy

Remedies

100. A range of various remedies designed to resolve situations involving the violation of a fundamental right is available to all of the inhabitants of the Argentine Republic. In addition to what has been mentioned earlier with respect to the amparo remedy, it should be noted that any person may bring action against any form of discrimination and in matters relating to rights for protecting the environment, to competition, to users and consumers, and to rights of general public concern.

101. When the right which has been infringed, restricted, jeopardized or threatened is that of physical liberty, or in the case of unlawful degradation of the form or conditions of detention, or in the event of enforced disappearance of persons, an application for habeas corpus may be filed by the affected party or by any person acting on his or her behalf, and the judge shall take an immediate decision, even if a state of siege is in force.

102. With regard to administrative appeals, Act No. 19549 on administrative procedures regulates the remedies that may be sought for acts performed by the administration. Such remedies are the petition for reconsideration, filed with the organ that took the decision appealed, and the hierarchical remedy, filed with the same authority but examined by the minister in charge of the sector concerned by the decision. The President of the Nation examines the hierarchical remedies filed against decisions of ministers.

Reporting of offences

103. Under article 174 of the Code of Criminal Procedure, in force since September 1992, "any person who considers himself or herself to have been harmed by an offence prosecutable ex officio or who, while not claiming to have been harmed, learns of such an offence, may file a complaint with a judge, a prosecutor or the police. Where the criminal action is a private action, only the person entitled to bring charges may file the complaint, in conformity with the relevant provisions of the Criminal Code. Subject to the formalities set forth in book I, title IV, chapter IV, the person reporting the offence may ask to be considered as a plaintiff".

104. As to the obligations incumbent on public officials, article 177 of the Code of Criminal Procedure states that "the following persons have an obligation to file complaints concerning offences prosecutable ex officio: (i) public officials or employees who learn of such offences in the course of their work; (ii) physicians, midwives, pharmacists and other persons engaged in any of the health professions, with regard to offences they learn of while providing their professional services, unless the acts of which they have knowledge are protected by professional secrecy."

3. Article 84: Duty to implement the provisions of the Convention

105. Reference is made to the information provided in the introduction to this report with regard to the legal and regulatory framework governing the implementation of the Convention.

B. Part III of the Convention: Human rights of all migrant workers and members of their families

1. Article 8 of the Convention: Right to leave any country, including one's country of origin, and to return to the latter

106. As already mentioned, article 14 of the national Constitution states that "all inhabitants of the Nation are entitled to the following rights, in accordance with the laws regulating the exercise thereof: (...) to enter, stay in, transit through and leave the Argentine territory (...)".

107. Under article 4 of Act No. 25871 on migration, "the right to migrate is a fundamental and inalienable entitlement of the person, and the Argentine Republic guarantees that right on the basis of the principles of equality and universality".

108. The right to migrate implies a positive attitude towards migration and puts an end to viewing it as phenomenon related to delinquency and insecurity. Migration must no longer be seen in a negative light but should be regarded as a contribution to the countries' development.

109. The right to migrate also implies a conceptual distinction between a foreigner's immigration status and his or her human condition, which supersedes any other situation. In other words, a person's dignity, fully supported through the guarantee for his or her fundamental rights, must not and may not be limited by the irregularity of his or her entry or stay in Argentine territory. In its Advisory Opinion No. 18, the Inter-American Court of Human Rights (IACHR), an independent judicial institution within OAS, referring to the rights of illegal immigrants, states that "... a person's immigration status may in no way justify depriving him or her of the enjoyment and exercise of his or her human rights ...".

110. In line with ratified international instruments, Argentine legislation broadly applies this rule, viewing migration in a positive and realistic perspective adapted to actual circumstances and based on the conviction that the migrant population is not a demographic burden but a tool for national growth.

2. Articles 9 and 10 of the Convention: Right to life; prohibition of torture; prohibition of inhuman or degrading treatment

111. The right to life constitutes in fact the first and foremost human right and is protected by the national Constitution, in which it has been explicitly enshrined since the 1994 reform, when the main international human rights instruments establishing, inter alia, the right to life rose to constitutional rank.

3. Article 11: Prohibition of slavery and forced labour

112. Article 15 of the national Constitution provides that "in the Argentine Nation there are no slaves .... Any contract for the purchase and sale of persons is a crime for which the parties and the notary or officer authorizing it shall be liable".

113. Moreover, under article 140 of the Criminal Code, "anyone holding a person in slavery or in a comparable condition or receiving a person in that condition for the purpose

of keeping him or her in slavery shall be punished with the applicable custodial penalties (established in articles 141 et seq.).

114. There is no bonded labour or debt servitude of any kind in Argentina.

115. With regard to the so-called "contemporary forms of slavery", reference is made below to the measures taken by Argentina in relation to the crime of trafficking in human beings.

116. In 2000, Argentina ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

117. On 30 April 2008, Argentina promulgated Act No. 26364 on the prevention and punishment of trafficking in persons and aid for victims. The Act defines trafficking in persons - the third-largest form of illegal trade in financial terms after the illicit weapons and drug trades – as a federal crime punishable with 3-15 years' imprisonment. It distinguishes between adult victims and those under 18 years of age. In the case of adults, there must be evidence of coercion in order to substantiate the offence, and the penalty prescribed is 3-6 years' imprisonment and may be increased to up to 10 years, if the offender is a spouse or close relative of the victim. The penalty ranges between 4 and 10 years' imprisonment where the victim is under 18 and between 6 and 15 years' imprisonment without parole where the victim is under 13.

118. Moreover, the Act establishes that victims have the right to:

(a) Be informed of their rights in a language they understand and in wording suited to their age and level of maturity;

(b) Appropriate housing, care, sufficient food and adequate facilities to maintain personal hygiene;

(c) Psychological, medical and legal assistance free of charge;

(d) Benefit from special conditions in terms of protection and care when bearing witness;

(e) Protection from all possible reprisals against them or their families and to placement in the national witness protection programme as provided for in Act No. 25764;

(f) The adoption of all means necessary to ensure their physical and psychological integrity;

(g) Be informed of the status of the proceedings, the measures adopted and any developments in the process;

(h) Be heard at all stages of the proceedings;

(i) Protection of their identity and privacy;

(j) Stay in the country, in accordance with the legislation in force, and to be given documents or other certification establishing their legal status;

(k) Assistance in returning to their previous homes;

(l) Free and voluntary access to assistance.

119. In the case of children and adolescents, in addition to the rights mentioned above, there is the guarantee that the proceedings will take into consideration their special needs as individuals still in the midst of their personal development process. They are under no circumstances to be subjected to confrontations. The measures used for the protection of

their rights are not to restrict their rights or guarantees, nor deprive them of their liberty. Efforts are to be made to return them to their immediate or extended family or community.

120. The new Act stipulates that the national budget is to include the allocations required for the implementation of the Act.

121. This Act effectively institutes the National Programme for the Prevention and Eradication of Trafficking in Persons and for Assistance to its Victims, which was created by Decree No. 1281/07 of 2 October 2007. This programme, which is to be overseen by the Ministry of the Interior, has been designed to coordinate the State's efforts to achieve greater effectiveness in preventing trafficking in persons and in assisting victims. The programme will also be responsible for all activities aimed at preventing and eradicating trafficking in persons.

122. Such activities include building the capacity for detaining and prosecuting traffickers and dismantling trafficking networks; ensuring respect for and the exercise of the victims' rights; forestalling and preventing revictimization; promoting research on the problem and greater awareness of it; monitoring compliance with the relevant legal provisions; creating a database on human trafficking; and making available a free telephone hotline for reporting the crimes in question.

123. In 2008, pursuant to Resolution No. 2149/08, the Office for the Rescue of and Assistance to Victims of Trafficking Offences was created within the Office of the Minister at the Ministry of Justice, Security and Human Rights. One of the responsibilities of the new office is to centralize all complaints, official letters and other communications related to trafficking in human beings. The information centralized by this office comes from the databases created by the divisions specifically engaged in combating and preventing the crime of trafficking in human beings within the units of the Federal Security Forces created in the framework of the Ministry of Justice, Security, and Human Rights, under Resolution N° 1679, namely the Human Trafficking Division of the Argentine Federal Police, the Human Trafficking Department of the National Gendarmerie, the Smuggling and Human Trafficking Department of the Argentine Coastguard, and the Human Trafficking Division of the Complex Offences Subdirectorate of the Airport Security Police.

124. The Ministries of Justice, Security and Human Rights, of Social Development, of the Interior, of Labour, Employment and Social Security and of Foreign Affairs, Trade and Religion, the Public Prosecutor's Office (the Prosecution Service and the Ombudsman's Office) and the National Tourism Secretariat coordinate their action in Argentina in order to raise the effectiveness of their combat against human trafficking.

125. The above joint efforts are combined with cooperation with international NGOs and international and civil society organizations.

126. Some of the areas, plans and programmes developed by the various ministries to address the human trafficking issue are briefly described below.

127. In addition to the Office for the Rescue of and Assistance to Victims of Trafficking Offences, the following initiatives have been launched under the responsibility of the Ministry of Justice, Security and Human Rights:

(a) The Victims against Violence Programme, one of the aims of which is to provide care for victims of abuse and ill-treatment caused by the exercise of any kind of violence, in a contained and safe environment where their rights are guaranteed; and the Girls Squ@d (*Brigada Niñ@s*), whose main task is to provide care to victims of sexual exploitation or human trafficking and to prevent, in cooperation with the Security Forces, such criminal activity.

(b) The Special Unit to Promote the Eradication of Sexual Exploitation of Children and Adolescents, which is presided over by the Human Rights Secretariat. Its main duties are to promote policies for the promotion, protection, defence and restoration of the rights of children and adolescents who are victims of offences against their sexual integrity.

(c) The National Programme on Prevention of the Abduction of and Trafficking in Children, and of Crimes against their Identity. It operates the National Missing Children Registry (Act No. 25746), the purpose of which is to centralize, organize and cross-reference information from all parts of the country in a database concerning children whose whereabouts are unknown, and children living in care, protection, detention or internment establishments whose filiation or identification data are unknown.

128. The Ministry of Social Development, through the National Secretariat for Children, Adolescents and the Family, has been carrying out projects of technical assistance, assistance to human trafficking victims, training, exchange days and twin city congresses; and has engaged in cooperation with Government organizations, document preparation and large-scale awareness-raising and dissemination campaigns in the area in question. Moreover, it undertakes such specific activities as Prevention of the Sexual Exploitation of Children and Trafficking in Persons.

129. The Ministry of Labour, Employment and Social Security implements the National Plan for the Regularization of Employment (PNRT), consisting in a State policy of using labour inspection to ensure that undeclared wage-earners are registered in the Social Security System. Such regular inspections may lead to the detection of human trafficking cases.

130. The National Ministry of Health conducts the National Sexual Health and Responsible Parenthood Programme, instituted by Act No. 25673 and aimed resolutely at taking and implementing the gender approach.

131. Under resolution PGN No. 100/08 of 22 August 2008 of the National Public Prosecutor's Office, issues connected with investigation into offences provided for in articles 145 bis and ter of the Criminal Code and related matters come under the jurisdiction of the Prosecution Unit on Kidnapping for Ransom and Trafficking in Persons (UFASE). The Work Plan against trafficking in human beings developed by UFASE was adopted through resolution PGN No. 160/08 of 27 November 2008.

132. The National Office of the Ombudsman plays a key role through the defence offices assisting human trafficking victims. It also includes the Unit for civil and criminal representation of human trafficking victims, particularly minors, and the expertise needed by the civil servants of this Public Defence Service. Currently, the Office implements a pilot programme, through which the Public Defence Service cooperates with the Programme of the Ministry of Justice, Security and Human Rights, fulfilling the statutory obligation to protect under age victims of offences against sexual integrity and of human trafficking.

133. Since August 2005, the National Tourism Secretariat has been implementing, under the responsibility of the National Directorate of Tourism Quality Management, the Responsible Tourism and Children Programme, which seeks to protect the rights of children and adolescents in the context of travel and tourism by preventing sexual and labour exploitation and human trafficking. The strategies adopted include the following initiatives:

At the national level

134. Main activities:

(a) Networking with programmes of other national ministries through participation in the Inter-ministerial Committee of the National Plan of Action for the Rights of Children and Adolescents;

(b) Provision of information on progress achieved by the programme to the provincial authorities for tourism at meetings of the Federal Council of Tourism;

(c) Awareness-raising among the leaders of business associations in the sector of tourism.

At the international level

135. Active membership of the World Tourism Organization (UNWTO) Action Group for the Prevention of the Exploitation of Children and Adolescents in Tourism and of the Regional Action Group for the Prevention of the Exploitation of Children and Adolescents in the Context of Travel and Tourism

Information campaigns regarding human trafficking

136. The Argentine Government considers it crucial that information campaigns designed to raise society's awareness of the importance of preventing and combating human trafficking should reach the population as a whole. Various channels and fora are used to that end.

137. In that framework, the Human Rights Secretariat in the Ministry of Justice, Security and Human Rights, in cooperation with the National Secretariat for Children, Adolescents and the Family in the Ministry of Social Development, has organized various discussion days, training workshops and other meetings aimed at the promotion and protection of the rights of children and adolescents who have been victims of sexual exploitation.

138. During 2007, the Ministry of Justice, Security and Human Rights supported through INADI the public awareness campaign entitled "No to Human Trafficking, No to Modern Slavery", developed by the International Organization for Migration (IOM) and consisting of a television and a radio advertisement complemented with visual material.

139. The various INADI provincial delegations have carried out information campaigns for preventing and combating human trafficking. The campaigns consisted of frequent pamphlet distributions, awareness-raising days in main thoroughfares (use of billboards), participation in local radio and television broadcasts, and film-discussion and radio-talk series. The events focused on violence and sexual exploitation suffered by children and adolescents.

140. Through the National Secretariat for Children, Adolescents and the Family, the Ministry of Social Development has carried out a visual communication campaign, with graphic material developed in Spanish, Quechua and Aymara for the Triple Border region and distributed in the border areas.

141. The same Ministry also conducted an awareness-raising campaign entitled "The rights of children and adolescents: against trafficking and exploitation in the twin towns La Quiaca and Villazón" and based on an agreement between the Republic of Bolivia and the Argentine Republic. This campaign was carried out in Spanish, Quechua and Aymara.

142. Through the National Tourism Secretariat, the Ministry of Production has carried out awareness-raising workshops and campaigns, with lectures in universities and other higher education institutions engaged in training tourism professionals for the future.

4. Freedom of opinion and expression; freedom of thought, conscience and religion; right to join a trade union

Freedom of expression

143. Under article 14 of the national Constitution, "the inhabitants of the Nation are entitled to the following rights, in accordance with the laws regulating the exercise thereof: (...) to publish one's ideas through the press without previous censorship ..."

144. Under article 32 of the national Constitution, "the Federal Congress shall not enact laws restricting the freedom of the press or establishing federal jurisdiction over it."

Freedom of thought, conscience and religion

145. Freedom of thought, conscience and religion is guaranteed by the national Constitution and the main international human rights instruments, which have constitutional rank in Argentina.

146. Following the 1994 reform, adherence to the Apostolic Roman Catholic faith is not a requirement for holding the presidency of the country, as it was under the 1853/1860 Constitution. It is also the case that members of some of Argentina's religious communities are given the day off with pay on religious holidays, as in the case of the members of the Jewish community, who pursuant to Act No. 24.571 (see annex) enjoy paid time off on the principal Jewish holy days: New Year (Rosh Hashana), Day of Atonement (Yom Kippur) and Passover (Pesach). This is also the case for the Islamic community pursuant to Act No. 24.757 of 28 November 1996 (see annex), which declares non-working days for all the country's inhabitants who profess the Islamic faith: Moslem New Year (Hegira), the day following the end of Ramadan (Id Al-Fitr) and the Feast of the Sacrifice (Id Al-Adha).

Right to join a trade union

147. In Argentina, union rights enjoy a triple legal protection, namely at the levels of the national Constitution, international law and legislation, depending on the nature of the applicable legal instrument.

148. Generally speaking, the provisions in force are contained in article 14 bis of the national Constitution, the international covenants and treaties ratified by Argentina, the international labour agreements and various national Acts, including Act N° 23551, which is fundamental with regard to union matters.

149. Over and above the declarations, covenants and international treaties establishing union rights and ratified by Argentina, the relevant ILO conventions, having the rank of international law, are part of the Argentine legal system and complement the union rights and guarantees enshrined in the national Constitution.

150. The ILO conventions referred to are the following:

- Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, 1948, adopted pursuant to Act N° 14932;
- Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, 1949, adopted pursuant to Executive Order N° 11594/56;
- Convention No. 154 concerning the Promotion of Collective Bargaining, 1981, adopted pursuant to Act N° 23544.

Act No. 23551

151. This is the fundamental Act regarding union matters. Based on the constitutional recognition of the right of workers to form unions, Act N° 23551 establishes the system of trade union associations, guaranteeing freedom of association and defining the rights and obligations of such organizations.

Act No. 25877

152. Act No. 25877 on the labour system, in article 24, implemented through Decree No. 272/2006, regulates strikes in essential services; and, in article 25, establishes that enterprises employing more than 300 workers must prepare an annual social audit containing systematic information on working and employment conditions, labour costs and social benefits provided by the company. The document must be transmitted to the recognized trade union having signed the applicable collective labour agreement.

153. Moreover, Act N° 25877 introduced substantial changes to the collective bargaining system, including, in particular, new standards regarding the interrelation and prevalence of agreement provisions, the participation of personnel representatives in the negotiation of the collective agreement applicable to the enterprise employing them, and the obligation to negotiate in good faith.

Acts No. 14250 and No. 23546

154. Collective bargaining is regulated by Act No. 14250, which is the fundamental Act and lays down the fundamental framework in this area. It is complemented by Act No. 23546 with regard to the entry of collective agreements into effect.

Act No. 25674

155. Under Act No. 25674 on trade union quotas for women, the percentage of female representatives participating in each collective bargaining session that deals with working conditions must be proportional to the percentage of women workers in the relevant branch of activity. The same Act amended article 18 of Act No. 23551, stipulating the prerequisites for membership of trade union governing bodies, by adding text providing that, where the proportion of women in the total number of workers attains or exceeds 30 per cent, women must account for at least that percentage among elective and representative office holders in trade union associations.

5. Prohibition of arbitrary or unlawful interference with privacy, home, correspondence and other communications; prohibition of arbitrary deprivation of property

156. In this area, Argentina has adopted the same guarantees that are enjoyed by Argentine citizens.

157. In that connection, article 19 of the national Constitution is worded as follows: "The private actions of men which in no way offend public order or morality or injure a third party are left to God and do not come under the jurisdiction of judges. No inhabitant of the Nation shall be required to perform what the law does not demand nor deprived of what the law does not prohibit".

158. Under article 17 of the national Constitution, property may not be violated, and no inhabitant of the Nation may be deprived of it save by virtue of a sentence based on law. Expropriation on the grounds of public interest must be authorized by law and previously compensated.

159. With regard to correspondence and other forms of communication, article 18 of the national Constitution provides that "the domicile is inviolable, and so are written

correspondence and private papers". Over and above the "domicile", "correspondence" and "private papers", legal protection is provided also with regard to the security of persons, homes, documents and effects against arbitrary searches or seizures, in line with the American Convention on Human Rights, or "Pact of San José, Costa Rica", an instrument which has constitutional rank in Argentina and, in article 11 (2), provides as follows: "No one may be the object of arbitrary or abusive interference with his or her private life, family, home, or correspondence."

6. Article 16 (paragraphs 1-4), 17 and 24 of the Convention: Right to liberty and security of persons; safeguards against arbitrary arrest and detention; recognition as a person before the law

160. The previous Argentine legislation on migration, repealed by the current Act No. 25871, authorized the National Directorate of Migration (DNM) to order the preventive detention of a foreigner before his or her expulsion was definitively decided.

161. Since the promulgation of Act No. 25871, the intervention of justice is obligatory with regard to detention and, therefore, DNM no longer has discretionary power to order a foreigner's detention, which is a matter to be decided by a judge. This guarantee is in line with the safeguards enshrined in article 18 of the national Constitution in the following terms: "No inhabitant of the Nation may be punished without a previous trial based on a law enacted before the act that gives rise to the proceedings; or tried by special committees; or removed from the judges appointed by law before the act for which he or she is tried. Nobody may be compelled to testify against oneself or be arrested except by virtue of a written warrant issued by a competent authority. The defence of persons and rights in a trial may not be violated ..."

7. Prohibition of imprisonment, deprivation of authorization of residence and/or work permit and expulsion merely on the grounds of failure to fulfil a contractual obligation

162. Title V of Act No. 25871 on migration refers to the regularity and irregularity of a person's stay.

163. Under the Act, the immigration authorities may require a foreigner whose stay is deemed illegal to regularize his or her status within a specific deadline in order to avoid expulsion.

164. Should that person's status not be regularized in that period, DNM shall order his or her expulsion with suspensive effect and shall request to participate as a party before the competent judge or court with respect to the review of the administrative decision of expulsion. Without prejudice to the appropriate judicial proceedings, any residence permit granted shall be cancelled with suspensive effect, regardless of the length, category or basis of the authorization, and expulsion shall be subsequently ordered.

165. Without prejudice to the foregoing, the expulsion of a foreigner is not subject to considerations involving any work-related irregularity or any failure to fulfil an obligation under an employment contract. In such situations, a foreigner must face labour justice on an equal footing with Argentine citizens, and his or her residence rights are not thereby affected.

166. In that connection, the Act on migration contains the following provisions:

> "Article 16. The adoption by the State of all necessary and effective measures to eliminate an employment agreement in the national territory of immigrants in an irregular situation, including the imposition of sanctions to the employers, shall not reduce the immigrant workers' employment-related rights vis-à-vis their employers."

"Article 65. No foreigner or relative of his or her shall be deprived of the authorization of residence or expelled for merely failing to fulfil an obligation under an employment contract, unless the fulfilment of such an obligation is a prerequisite for the authorization or permission in question."

8. Articles 21, 22 and 23 of the Convention: Protection from confiscation and/or destruction of ID and other documents; protection against collective expulsion; right to recourse to consular or diplomatic protection

167. The national identity document is a public document owned by its holder and therefore may not be withheld or confiscated, save by judicial order and in specific cases. Accordingly, article 14 of Act No. 17671 on identification, registration and classification of national human resources provides as follows:

"Article 14. The national identity document must be preserved in a perfect condition and may not be withheld from its holder, save by:

(a) The authority to which it is presented, when the document seems illegally held. In that case, the authority must transmit it to the National Registry of Persons with an appropriate report.

(b) The court hearing a case, when the holder is a detained defendant, and in so far as the measure is necessary in order to prevent violations of the legislation in force.

(c) Military authorities with respect to citizens fulfilling their legal military obligations and for the duration of their military service.

(d) The administration of public institutions and hostels, in the case of persons who are legally incompetent, have no legal representative or have been interned.

(e) The legal representatives of legally incompetent persons."

168. With regard to assistance provided by consular and diplomatic authorities, it should be noted that the Argentine Republic ratified the Vienna Convention on Consular Relations, 1963, by Act No. 17081, which lays down the powers and responsibilities of consular staff, including in particular the following functions (specified in article 5 of the Convention):

- Protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;
- Issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;
- Helping and assisting nationals, both individuals and bodies corporate, of the sending State;
- Acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;
- Subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests

169. Article 36 ("Communication and contact with nationals of the sending State") of the same international convention, which has full effect in Argentina, provides as follows:

"With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) Consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State.

(b) Should the person concerned so request, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph.

(c) Consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him or her and to arrange for his or her legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he or she expressly opposes such action."

170. Accordingly, on the view that any act or omission motivated by such factors as ethnicity, religion, nationality, ideology, political opinion, trade union affiliation, gender, economic position or physical traits which arbitrarily prevents, impedes or restricts the full exercise, on an equal footing, of rights and guarantees enshrined in the national Constitution, the international treaties and the law is to be considered discriminatory (article 13 of Act No. 25871), the Act on migration specifies a series of rights and guarantees, related to the Convention articles considered. Thus, migrants and their families are entitled to receive information from the State regarding:

(a) Their rights and duties under existing legislation;

(b) The requirements pertaining to their entry, stay and departure;

(c) Any other issue that allows or facilitates completing administrative or other formalities in the Argentine Republic. The implementing authority shall adopt all measures that it considers appropriate for disseminating the information in question and, in the case of migrant workers and their families, shall ensure that such information is supplied by the employers, the trade unions and other bodies or institutions. To the foreigners requesting it, the necessary information shall be provided free of charge and, if possible, in a language that they understand."

171. Argentine consular authorities carry out the following activities for the benefit of Argentine emigrants residing abroad:

The *Volver à Trabajar* ("Returning to Work") and *Raíces* ("Roots") Programmes

172. The Argentine Ministries of Foreign Affairs and of Science, Technology and Productive Innovation have undertaken an initiative aimed at addressing all Argentines who consider returning to work in the country and to bring them in contact with enterprises with specific job offers.

173. Through the General Directorate for Consular Affairs, the Ministry of Foreign Affairs participates in the Advisory Council of the *Raíces* Programme of the Ministry of Science, Technology and Productive Innovation.

174. In that framework, it was proposed to widen the *Raíces* Programme by launching the *Volver à Trabajar* Programme. This broad and straightforward initiative, jointly administered by the Ministries of Foreign Affairs and of Science, Technology and Productive Innovation and the participating enterprises, allows these firms, by signing a simple Memorandum of Understanding, to offer jobs of any type to Argentines residing abroad through the country's network of 124 consulates operating in 77 countries. Moreover, enterprises may provide a name and an address for Argentines residing abroad to transmit their aspirations or expressions of interest.

175. The Ministry of Foreign Affairs transmits the information received electronically from the enterprises participating in the programme to the network of consulates, which post it on their web pages and on billboards set up in the areas accessible to the public in every delegation, announce it at all events attended by the local communities of Argentine expatriates, and use all available opportunities to disseminate it.

176. The Ministry of Foreign Affairs and the network of consulates disseminate the job offers and messages in question free of charge. Job offerers and seekers negotiate directly and the service provided does not entail any responsibility for the outcome of these efforts or for the accuracy and validity of the information transmitted by the parties.

177. The goal of the programme entitled *Raíces* - Network of Argentine Researchers and Scientists Abroad - is to build the country's scientific and technological capacities through the development of policies cultivating ties with Argentine researchers residing in other countries and through action aimed at encouraging researchers to stay in the country and facilitating the repatriation of those interested in developing their activities in Argentina. The programme seeks to remain open to the interests and initiatives of Argentine researchers living at home and abroad through the implementation of policies promoting retention, repatriation and linkages.

178. The programme's goals are, inter alia:

- To disseminate abroad information on the country's scientific and technological activities;
- To enhance linkages between Argentine researchers living at home and abroad;
- To enhance the quality and availability of information on highly qualified Argentine researchers and professionals living abroad;
- To develop networking with Argentine researchers living abroad;
- To involve Argentine researchers living abroad in the activities of the "Focus on Neglected Areas of Research" Programme (PAV);
- To involve the productive sector of the country, foundations and another NGOs in the activities of the programme.

179. With regard to collective expulsion, prohibited in the Argentine Republic, the above Act specifically stipulates in article 66 that "foreigners and their relatives shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually".

180. The factors outlined in the preceding paragraph notwithstanding, and until the new regulations are ratified, the Ministry of the Interior and DNM have adopted a series of measures to ensure that the spirit of Act No. 25871 is duly upheld.

9. Articles 25, 27 and 28 of the Convention: Principle of equality of treatment in respect of: remuneration and other conditions of work and terms of employment; social security; and right to receive urgent medical care

181. As already mentioned, article 20 of the national Constitution explicitly underscores the equality of the civil rights enjoyed by immigrants and citizens.

182. Moreover, the Act on migration promotes the social integration of foreigners on an equal footing with nationals and, as previously mentioned, punishes all forms of discrimination, racism and xenophobia, and adopts the standards set out in the ILO conventions.

183. Thus, the Act recognizes the migrants' rights to, inter alia, employment, social security, medical attention and education, on the basis of human dignity, a factor more fundamental than the foreigner's immigration status.

184. The following provisions ensure the foreigners' access to certain services regardless of immigration status:

> Article 6. "In all areas falling within its jurisdiction, the State shall guarantee migrants and their families equal access under the same conditions with regard to protection and rights as those enjoyed by nationals, particularly with respect to social services, public goods, health, education, justice, employment and social security."
>
> (...)
>
> Article 8. "In no case shall a foreigner's situation as an illegal immigrant prevent him or her from being accepted as a student in a public or private national, provincial or municipal educational establishment at the primary, secondary, tertiary or university level. The authorities of educational establishments shall provide guidance and advice concerning the procedures for resolving irregularities in the immigration status."

10. Articles 29, 30 and 31 of the Convention: Right of a child of a migrant worker to a name, registration of birth and nationality; access to education on the basis of equality of treatment; respect for the cultural identity of migrant workers and members of their families

185. With respect to the right to have a name, article 1 of Act No. 18.248 establishes that every individual has the right and the duty to use his or her given name and family name in accordance with the provisions of the Act.

186. Nationality is a fundamental human right establishing between the individual and the State an essential legal link, by virtue of which a person is a member of the political community that the State constitutes. Nationality is a key to the individual's security inasmuch as, in addition to providing a person with a sense of affiliation and identity, nationality confers on the individual the right to protection by the State and forms a legal basis for the exercise of various civil and political rights.

187. The current system for the acquisition of Argentine nationality is based on *ius soli*. As a result, having been born on Argentine soil entitles a person to Argentine nationality. All persons born in the national territory acquire Argentine nationality automatically, save for the children of foreign ministers and members of the diplomatic community resident in Argentina (Act No. 346 on citizenship), and are consequently entitled to receive their first national identity document (DNI).

188. This national identity document may also be issued to foreign citizens having continuously resided in the Argentine territory for more than six months and obtained a residence permit from DNM.

189. The basic provisions recognizing the right to nationality in the Argentine Republic are contained in Act No. 346, whose article 1 provides as follows: "Argentine nationality is obtained by birth or naturalization. The following persons, among others, are Argentine by birth: "[...] those born in the national territory, territorial waters and airspace, Argentine military vessels or airships and on neutral waters or an international zone under Argentine flag".

190. Under article 2 of the same Act, the following persons are Argentine by naturalization:

"1. Foreigners aged 18 or older, who have resided in the country for two consecutive years and who state before the federal judges having jurisdiction over their place of residence their will to be so naturalized.

2. Foreigners, regardless of the length of their residence, who meet one of the following criteria, among others:

- Having held posts in the national, provincial, municipal or other public administration;
- Having served in the Armed Forces in defence of the country;
- Being engaged in research and/or teaching in any field [...]"

191. Moreover, Argentine nationality can be acquired "by choice" in accordance with the provisions of Act No. 364 on citizenship under the following conditions:

192. The national Constitution guarantees the right to education. The Convention on the Rights of the Child, which has constitutional rank in Argentina, confirms the children's right to education, to be exercised under conditions of equality. In order to ensure the implementation of that right, the states recognize the need to universalize obligatory and free primary education and to improve access to secondary and higher education.

193. As mentioned above, the Act on migration provides the legal framework for Argentina's migration policy. This new Act sets high standards for the protection of migrants' rights and lays the basis for public policies designed to integrate them into society. It stipulates, inter alia, that all foreigners in the Argentine Republic, even those with irregular immigration status, enjoy the right to health and education. Article 7 of the Act is worded as follows:

> "In no case shall a foreigner's being an illegal immigrant prevent his or her admission as a pupil or student in an educational establishment, whether public or private, national, provincial or municipal, or at the primary, secondary, tertiary or university level. The administration of educational establishments shall provide guidance and advice with regard to the relevant procedures for rectifying migratory irregularity."

194. In accordance with these guidelines, the Argentine Republic has adopted domestic safeguards in order to ensure that all immigrants, regardless of whether they are documented, enjoy equal access to education. Under article 141 of Act No. 26206 on national education, "the national State, the provinces and the Autonomous City of Buenos Aires shall guarantee immigrants without a national identity document access to, and conditions for attending and graduating from, all levels of the education system, on the basis of the presentation of documents issued in their country of origin, in accordance with the provisions of article 7 of Act No. 25871".

195. Education must seek to develop fully the children's personality and capacities, produce citizens aware of their rights and obligations, and foster the values of tolerance and respect for one's parents, for one's own and other groups' culture and for the environment. Such objectives reach beyond coverage by the education system and involve the contents and quality of education.

196. Moreover, Argentine legislation recognizes the right of ethnic, religious or linguistic minorities and indigenous peoples to develop their culture and use their own language. Such rights are also protected by human rights treaties having constitutional hierarchy under article 75 (22) of the national Constitution.

11. Articles 32 and 33 of the Convention: Right to transfer one's earnings, savings and personal belongings to one's State of origin; right to be informed on the rights arising from the Convention; and dissemination of information

197. In Argentina, immigrants have the right to transfer freely their personal income and savings, in particular the funds necessary for their family's livelihood, to their country of origin, in accordance with the applicable rules and the domestic legislation of the individual States parties.

198. The Argentine Republic considers remittances to be private financial flows, whose source is the work of the immigrant population and which contribute to improving the quality of life of the beneficiaries and, therefore, in no way constitute official development assistance. It is necessary to reduce obstacles to sending remittances, facilitate the related transactions, reduce their costs and guarantee the immigrants' and the beneficiaries' access to banking services.

199. Access to information is considered as a key element when it comes to the formulation of policies. Such access is necessary for ensuring that policies are adapted to the requirements of the persons concerned and reflect the actual needs.

200. Migration is related to highly sensitive issues, such as discrimination and xenophobia, which require a specific and cautious approach to the treatment and dissemination of information.

201. The right to be informed is considered as a fundamental right. To foreigners, access to information is a crucial tool. Migration implies a change to one's legal status from "citizen" to "foreigner" and entails a weaker understanding of the legislation in force and the mechanisms used in the State where one resides. Knowing the rules applicable in the country of destination is a key to the development of the social life of the individuals concerned.

202. In that connection, the Act on migration provides as follows:

> "Article 9. Thus, migrants and their families are entitled to receive information from the State regarding:
>
> (a) Their rights and duties under existing legislation;
>
> (b) The requirements pertaining to their entry, stay and departure;
>
> (c) Any other issue that allows or facilitates completing administrative or other formalities in the Argentine Republic.
>
> The implementing authority shall adopt all measures that it considers appropriate for disseminating the information in question and, in the case of migrant workers and their families, shall ensure that such information is supplied by the employers, the trade unions and other bodies or institutions. To the foreigners requesting it, the necessary information shall be provided free of charge and, if possible, in a language that they understand."

C. Part IV of the Convention: Other rights of migrant workers and their families who are documented or in a regular situation

1. Article 37 of the Convention: Right to be informed before departure about the conditions of admission to the State of employment and about one's remunerated activity

203. Article 9 of Act No. 25871 on migration provides as follows:

> Migrants and their families are entitled to receive information from the State regarding:
>
> (a) Their rights and duties under existing legislation;
>
> (b) The requirements pertaining to their entry, stay and departure;
>
> (c) Any other issue that allows or facilitates completing administrative or other formalities in the Argentine Republic.
>
> The implementing authority shall adopt all measures that it considers appropriate for disseminating the information in question and, in the case of migrant workers and their families, shall ensure that such information is supplied by the employers, the trade unions and other bodies or institutions. To the foreigners requesting it, the necessary information shall be provided free of charge and, if possible, in a language that they understand."

204. In that connection, the same Act provides as follows:

> "Article 19. The Argentine Republic shall be able to provide guidance to any foreigner with respect to:
>
> (a) Access to limited categories of employment, duties, services or activities, when this is necessary in the interests of the State;
>
> (b) Choice of a paid activity in accordance with the legislation on conditions for the recognition of professional qualifications acquired abroad;
>
> (c) Conditions under which, having been admitted to be an employed worker, he or she may subsequently be authorized to be self-employed, taking into consideration the period of legal residence in the country and the other conditions established in the regulations."

2. Articles 38 and 39 of the Convention: Right to be temporarily absent without effect upon authorization to stay or work; right to freedom of movement and choice of a place of residence in the territory of the State of employment

205. As mentioned earlier in this report, free movement within the national territory is a right enjoyed by all inhabitants, without any distinction between nationals and foreigners. Once in the national territory, a person may move freely, regardless of his or her migration category upon entry (this right also applies to tourists).

206. Mere absence from the national territory leads to the cancellation of the benefit of residence for a temporary or permanent resident in the following cases alone:

> "Article 62. Without prejudice to any appropriate judicial proceedings, the National Directorate of Migration (DNM) shall cancel the residence permit, with suspensive effect, regardless of the length, category or basis of the authorization, and shall subsequently order expulsion, in the following cases:
>
> ...

(c) The beneficiary of a permanent residence authorization has stayed outside the national territory for more than two years or, in the case of temporary residence, for half of the period granted, save where the absence is due to the exercise of Argentine public duties or has been occasioned by activities, studies or research that, in the opinion of DNM, could be of interest or beneficial to the Argentine Republic or has been explicitly approved by the migration authority upon request through the Argentine consular authorities;

...

(e) The Ministry of the Interior ... shall waive the enforcement of the cancellation decided in accordance with this article, where the foreigner is the father, son, daughter or spouse of an Argentine person, with the exception of a duly reasoned decision of the migration authority.

Moreover, such waiver may be granted taking into account the length of legal stay immediately preceding the occurrence of any of the grounds provided for in paragraphs (a)-(d) of this article. That period may not be less than two years, and the personal and social circumstances of the beneficiary shall be taken into consideration."

3. Articles 40, 41 and 42 of the Convention: Right to form associations and trade unions; right to participate in public affairs of one's State of origin and to vote and be elected at elections in that State; procedure and institutions taking care of the needs of migrant workers and possible enjoyment of political rights in the State of employment

207. As already mentioned, "foreigners enjoy within the territory of the Nation all of the civil rights of citizens", pursuant to article 20 the national Constitution and the main international human rights instruments having constitutional rank in Argentina, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

208. Since the Argentine Nation adopts the federal republican representative form of Government (article 1 of the national Constitution), the Provincial States ("the Provinces") composing it must enact their own constitutions (articles 5 and 123 of the national Constitution), under certain conditions, including in particular all those related to supporting the "republican representative system" and respecting the "principles, declarations and guarantees of the national Constitution" (article 5 of the national Constitution). Under article 11 of Act No. 25871, Argentina "shall facilitate, in accordance with the relevant national and provincial legislation, the consultation or participation of foreigners in taking decisions regarding public life and the administration of the local communities where they reside".

209. The national Constitution specifically excludes foreigners, without any distinctions as to their nationality, from participating in elections actively (as voters) or passively (as representatives of a village, community, municipality or province which elects them), with due consideration for the provisions outlined above. In fact, the offices of President and Vice-President of the Nation and national deputy and senator are reserved to Argentine citizens. The foreigners' exclusion from elections derives from articles 48, 55 and 89 of the national Constitution with regard to passive participation, and from article 1 of Act No. 19945 (original text 1983) establishing the National Electoral Code with regard to active participation.

210. In most of the provincial constitutions of Argentina, an option has been made to safeguard explicitly the participation of resident foreign citizens in local elections, up to gubernatorial level in some cases. However, no Provinces allow the passive exercise of political rights by foreigners, who thus may not be elected to provincial offices (those of

provincial Governor and legislators); while the Province of Buenos Aires and the Autonomous City of Buenos Aires are the only states (Provinces) that allow the active participation of foreigners in elections for provincial or state offices, although the two districts are numerically important, since together they account for half of the country's population.

211. Where foreigners are entitled to vote, such active participation is subject to certain prerequisites depending on the individual Province, such as a specific age (18, 21 or majority) or an age specified by law, knowing to read and write in the national language, having had a residence in the municipality concerned for one to 10 years, being registered in a special record, carrying out a legitimate activity or liberal profession, paying direct taxes in general or over a certain amount, having a spouse or children of Argentine nationality or even holding a management post in a recognized entity.

212. Certain provincial constitutions grant foreigners passive election-related rights by allowing them to hold elective offices at the municipal level. In that connection, the rules draw a distinction between the public offices of town councillor (with legislative responsibilities) and mayor (holder of an individual executive office). The prerequisite for town councillor is having been a voter with a minimum residence of two to five years immediately preceding the election. In such cases, the participation of non-citizens in the local deliberative assembly may be restricted to a specific number (two) or a percentage of the total number of members (one third).

213. In order that such rights may be exercised more effectively, related entitlements are also granted, such as the right to join and participate in the organization and operation of political parties freely, although most state or provincial constitutions contain no specific provision on this matter or equate the foreigners' situation to that of the nationals.

4. Articles 44 and 50 of the Convention: Protection of the unity of the families of migrant workers and reunification of migrant workers; consequences of death or dissolution of marriage

214. Men and women moving to Argentina do so in search of better employment opportunities and a better quality of life. Often, only one member of the family immigrates, to be joined later by the rest.

215. In that context, family reunification is a right protected in Argentina by Act No. 25871, in line with the international treaties to which the country is a party.

216. This right enables foreigners residing in the Argentine Republic to bring their family to Argentina permanently or for a given period; and plays a key role inasmuch as it protects the valuable advantage of living in a family, an institution crucial to human development.

217. Accordingly, the Act on migration states, as part of its general principles, that (article 3) "the objectives of the Act are: [...] (d) to guarantee the exercise of the right to family reunification".

218. Also, in article 10, it establishes that "The State shall guarantee the right to family reunification of immigrants with their parents, spouses, single minor children or adult children with various disabilities".

219. Argentine legislation does not allow forfeiture of resident status as a result of the death of the migrant worker or family member having provided the basis for the immigration of his or her relatives.

5. Articles 49 and 56 of the Convention: Authorization of residence and authorization to engage in a remunerated activity; general prohibition and conditions of expulsion

220. This question is discussed in earlier sections of this report (articles 20-23, 25, 27 and 28).

D. Part V of the Convention: Provisions applicable to particular categories of migrant workers indicated in articles 57-63 of the Convention, if any

1. Article 57 of the Convention: "Migrant worker"

221. The provisions of this article are in agreement with the provisions of the national Constitution; and, as stated above, in the introduction and with regard to parts I-IV of the Convention, the rights in question are recognized to all inhabitants of Argentina.

2. Article 58 of the Convention: "Frontier worker"

222. The current Argentine legislation on migration does not provide for the category of "frontier workers". However, a "frontier local traffic" procedure exists in areas of the country bordering on neighbouring States.

223. This procedure consists in providing the residents of certain adjacent localities on either side of the frontier with a card authorizing them to move between the two countries within the border area (whose limits have been previously defined) without going through migration formalities, although a record is kept when the border is crossed.

224. Nevertheless, the Argentine Republic and the Federative Republic of Brazil concluded in 2005 an Agreement on Related Border Localities. In addition to the right to travel easily to the adjacent area in the neighbouring State, the agreement grants to the beneficiaries a series of rights in that area, namely the right to work, hold an office or exercise a profession; equal employment-related and social security rights in conjunction with equal employment-related, social security and tax obligations; the right to free public education and free medical attention in public health services, under conditions of reciprocity; and access to the border trade system for subsistence products or other commodities. This agreement is in the process of legislative incorporation and adoption. The Argentine Republic plans to undertake similar initiatives with the other countries with which it shares borders.

225. Moreover, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted by Act No. 26202 of the National Congress. Although the provisions of the Convention are therefore in force throughout the national territory, their operational aspects must still be regulated with a view to effective implementation.

3. Article 59 of the Convention: "Seasonal worker"

226. The "seasonal worker" criterion for admission figures among the migration criteria stipulated by Act No. 25871 on migration (article 24 (e)).

4. Article 60 of the Convention: "Itinerant worker"

227. The current Argentine legislation on migration does not provide for the category of "itinerant workers" as defined in the Convention. However, the Convention was adopted by Act No. 26202 of the National Congress and, therefore, its provisions are in force throughout the national territory, although their operational aspects must still be regulated with a view to effective implementation.

5. Article 61 of the Convention: "Project-tied worker"

228. The "project-tied worker" criterion for admission figures among the migration criteria stipulated by Act No. 25871 on migration (article 23 (e)).

6. Article 62 of the Convention: "Specified-employment worker"

229. The "specified-employment worker" criterion for admission figures among the migration criteria stipulated by Act No. 25871 on migration (article 23 (a)).

7. Article 63 of the Convention: "Self-employed worker"

230. The current Argentine legislation on migration does not provide for the category of "self-employed workers" as defined in the Convention. However, according to Act No. 25871 on migration, permanent residents, and temporary residents falling into the immigrant subcategory specified in article 23 (1) of the Act may engage in any lawful activity as self-employed workers and they enjoy all of the rights laid down in Part IV of the Convention.

231. Moreover, as mentioned earlier in this report, the Convention was adopted by Act No. 26202 of the National Congress and, therefore, its provisions are in force throughout the national territory, although their operational aspects must still be regulated with a view to effective implementation.

E. Part VI of the Convention: Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families

1. Article 65 of the Convention: Establishment of appropriate services to deal with questions concerning international migration of workers and members of their families

232. The National Directorate of Migration (DNM), a decentralized body under the authority of the Ministry of the Interior, is responsible for the implementation of the country's migration policy and legislation, and its specific responsibilities include the following functions:

- -Jurisdiction over all migration matters of a social character;
- Issue of residence permits and regularization of the immigration status of foreigners within the national territory
- Issue of certificates allowing immigrants and their families to complete administrative or other formalities.

233. The new organizational structure of DNM, adopted in June 2008, includes two units specifically established to counsel and assist immigrants, namely the Department of Advice to Migrants and the Department of Social Affairs and Assistance to Migrants.

234. The first, under the General Directorate of Immigration, is responsible for advising immigrants on issues related to residence authorization procedures, and intervening in the administration of suggestions, claims and complaints submitted by immigrants, with a view to improving the quality of services.

235. The second, under the Directorate for International and Social Affairs, performs the following functions:

- Developing activities necessary for implementing a policy on assistance to the immigrant population, based on linkages between migration issues and economic and social planning;
- Advising the operational directorates of the organization on social issues affecting their relations with immigrants, in order to ensure quality assistance to that group;
- Formulating and proposing plans for support to immigrants, including the management of NGO assistance specifically aimed at facilitating the integration of foreigners into Argentine society;
- Designing and managing projects aimed at improving the conditions of settlement of the immigrant population.

236. Migrant workers within the country may obtain information and advice on prerequisites for the initiation of procedures at the Migration Agencies and Offices of the Interior.

237. Immigrants may obtain from DNM information pamphlets regarding their rights, the various services available to them in the organization, the requirements for following procedures and the respective fees.

238. Lastly, DNM implements participatory procedures for determining the migrants' satisfaction level and expectations with respect to the services provided by the organization. These mechanisms, such as the Permanent Satisfaction Survey, are crucial to the adoption of ongoing improvement procedures in the organization and provide the Directorate with substantive information useful for making decisions.

2. Article 67 of the Convention: Measures regarding the orderly return of migrant workers and members of their families to the State of origin, their resettlement and cultural reintegration

239. DNM has jurisdiction over all migration-related matters related to the implementation of the international policy established by the Argentine State, including issues related to Argentines abroad.

240. Accordingly, the Department for Argentines abroad, which belongs to the Directorate for International and Social Affairs, seeks to strengthen linkages with Argentines residing in other countries, particularly by:

(a) Overseeing the drawing up of profiles of Argentines residing abroad;

(b) Compiling information on the number of Argentine residents in a regular and an irregular situation at the regional and international levels;

(c) Cooperating with nationals abroad in the formulation of policies, programmes or activities regarding policies for establishing links or for repatriation;

(d) Assisting Argentine consular representations abroad with regard to the rules necessary for the obtention of residence authorizations for the children of Argentine citizens;

(e) Assisting Argentine citizens with information required for the processing of residence applications abroad.

3. Article 68 of the Convention: Measures aimed at the prevention and elimination of illegal or clandestine movements and employment of migrant workers in an irregular situation

241. First and foremost, a Directorate for Stay Control has been set up within the new organizational structure of DNM, and comprises two departments, namely the Inspection Department and the Administrative Management Department.

242. The new structure has called for the streamlining of activities, a process accompanied by the incorporation of office staff and inspectors.

243. In order to standardize stay control criteria throughout the country, the Directorate promoted the adoption of a Stay Control Manual, which constitutes a training tool for the staff assigned to that task and provides new models for detailed inspection records and immigration statements with a view to enhanced operational efficiency.

244. During 2008, various meetings took place with other national organizations and provincial or municipal bodies (for instance, Ministries of Labour, provincial police departments, the Federal Police and the Government of the Autonomous City of Buenos Aires) in order to coordinate joint operations.

245. Inspections have been conducted in connection with requests for residence in order to verify the related employment claims. In many cases, the documents submitted by foreigners with their application were found to be forged. That contributed to an increase in the number of inspections carried out last year.

246. Over and above additional staff, the Inspection Department has been provided with vehicles and computerized communication equipment used for online inquiries regarding the immigration situation of foreigners in the area of the operation.

247. DNM has developed SADEX (System for the Admission of Foreigners), which provides screens specifically allowing to follow up on procedures involving foreigners presumed to be in an irregular situation or are considered "as aliens with legal problems" as a result of being currently involved in criminal proceedings or required to serve an enforceable sentence.

4. Article 69 of the Convention: Measures taken to ensure that migrant workers in an irregular situation do not persist in this condition within the territory of a State party and circumstances to take into account in case of regularization procedures

248. Reference is made to the information provided in section I (General Information) of this report.

Annex

[Spanish only]

Anexo I - *Ley de migraciones*

Ley Nº 25871

Política Migratoria Argentina. Derechos y obligaciones de los extranjeros. Atribuciones del Estado. Admisión de extranjeros a la República Argentina y sus excepciones. Ingreso y egreso de personas. Obligaciones de los medios de transporte internacional. Permanencia de los extranjeros. Legalidad e ilegalidad de la permanencia. Régimen de los recursos. Competencia. Tasas. Argentinos en el exterior. Autoridad de aplicación. Disposiciones complementarias y transitorias.

Sancionada: Diciembre 17 de 2003.

Promulgada de Hecho: Enero 20 de 2004.

El Senado y Cámara de Diputados de la Nación Argentina reunidos en Congreso, etc. sancionan con fuerza de Ley:

Ley de Migraciones

Título preliminar

Política Migratoria Argentina

Capítulo I
Ámbito de aplicación

Artículo 1. La admisión, el ingreso, la permanencia y el egreso de personas se rigen por las disposiciones de la presente ley y su reglamentación.

Artículo 2. A los fines de la presente ley se entiende por "inmigrante" todo aquel extranjero que desee ingresar, transitar, residir o establecerse definitiva, temporaria o transitoriamente en el país conforme a la legislación vigente.

Capítulo II
Principios generales

Artículo 3. Son objetivos de la presente ley:

a) Fijar las líneas políticas fundamentales y sentar las bases estratégicas en materia migratoria, y dar cumplimiento a los compromisos internacionales de la República en materia de derechos humanos, integración y movilidad de los migrantes;

b) Contribuir al logro de las políticas demográficas que establezca el Gobierno Nacional con respecto a la magnitud, tasa de crecimiento y distribución geográfica de la población del país;

c) Contribuir al enriquecimiento y fortalecimiento del tejido cultural y social del país;

d) Garantizar el ejercicio del derecho a la reunificación familiar;

e) Promover la integración en la sociedad argentina de las personas que hayan sido admitidas como residentes permanentes;

f) Asegurar a toda persona que solicite ser admitida en la República Argentina de manera permanente o temporaria, el goce de criterios y procedimientos de admisión no

discriminatorios en términos de los derechos y garantías establecidos por la Constitución Nacional, los tratados internacionales, los convenios bilaterales vigentes y las leyes;

g) Promover y difundir las obligaciones, derechos y garantías de los migrantes, conforme a lo establecido en la Constitución Nacional, los compromisos internacionales y las leyes, manteniendo en alto su tradición humanitaria y abierta con relación a los migrantes y sus familias;

h) Promover la inserción e integración laboral de los inmigrantes que residan en forma legal para el mejor aprovechamiento de sus capacidades personales y laborales a fin de contribuir al desarrollo económico y social de país;

i) Facilitar la entrada de visitantes a la República Argentina para los propósitos de impulsar el comercio, el turismo, las actividades culturales, científicas, tecnológicas y las relaciones internacionales;

j) Promover el orden internacional y la justicia, denegando el ingreso y/o la permanencia en el territorio argentino a personas involucradas en actos reprimidos penalmente por nuestra legislación;

k) Promover el intercambio de información en el ámbito internacional, y la asistencia técnica y capacitación de los recursos humanos, para prevenir y combatir eficazmente a la delincuencia organizada trasnacional.

Título I
De los derechos y obligaciones de los extranjeros

Capítulo I
De los derechos y libertades de los extranjeros

Artículo 4. El derecho a la migración es esencial e inalienable de la persona y la República Argentina lo garantiza sobre la base de los principios de igualdad y universalidad.

Artículo 5. El Estado asegurará las condiciones que garanticen una efectiva igualdad de trato a fin de que los extranjeros puedan gozar de sus derechos y cumplir con sus obligaciones, siempre que satisfagan las condiciones establecidas para su ingreso y permanencia, de acuerdo a las leyes vigentes.

Artículo 6. El Estado en todas sus jurisdicciones, asegurará el acceso igualitario a los inmigrantes y sus familias en las mismas condiciones de protección, amparo y derechos de los que gozan los nacionales, en particular lo referido a servicios sociales, bienes públicos, salud, educación, justicia, trabajo, empleo y seguridad social.

Artículo 7. En ningún caso la irregularidad migratoria de un extranjero impedirá su admisión como alumno en un establecimiento educativo, ya sea este público o privado; nacional, provincial o municipal; primario, secundario, terciario o universitario. Las autoridades de los establecimientos educativos deberán brindar orientación y asesoramiento respecto de los trámites correspondientes a los efectos de subsanar la irregularidad migratoria.

Artículo 8. No podrá negársele o restringírsele en ningún caso, el acceso al derecho a la salud, la asistencia social o atención sanitaria a todos los extranjeros que lo requieran, cualquiera sea su situación migratoria. Las autoridades de los establecimientos sanitarios deberán brindar orientación y asesoramiento respecto de los trámites correspondientes a los efectos de subsanar la irregularidad migratoria.

Artículo 9. Los migrantes y sus familiares tendrán derecho a que el Estado les proporcione información acerca de:

a) Sus derechos y obligaciones con arreglo a la legislación vigente;

b) Los requisitos establecidos para su admisión, permanencia y egreso;

c) Cualquier otra cuestión que le permita o facilite cumplir formalidades administrativas o de otra índole en la República Argentina.

La autoridad de aplicación adoptará todas las medidas que considere apropiadas para difundir la información mencionada y, en el caso de los trabajadores migrantes y sus familias, velará asimismo por que sea suministrada por empleadores, sindicatos u otros órganos o instituciones. La información requerida será brindada gratuitamente a los extranjeros que la soliciten y, en la medida de lo posible, en un idioma que puedan entender.

Artículo 10. El Estado garantizará el derecho de reunificación familiar de los inmigrantes con sus padres, cónyuges, hijos solteros menores o hijos mayores con capacidades diferentes.

Artículo 11. La República Argentina facilitará, de conformidad con la legislación nacional y provincial en la materia, la consulta o participación de los extranjeros en las decisiones relativas a la vida pública y a la administración de las comunidades locales donde residan.

Artículo 12. El Estado cumplimentará todo lo establecido en las convenciones internacionales y todas otras que establezcan derechos y obligaciones de los migrantes, que hubiesen sido debidamente ratificadas.

Artículo 13. A los efectos de la presente ley se considerarán discriminatorios todos los actos u omisiones determinados por motivos tales como etnia, religión, nacionalidad, ideología, opinión política o gremial, sexo, género, posición económica o caracteres físicos, que arbitrariamente impidan, obstruyan, restrinjan o de algún modo menoscaben el pleno ejercicio sobre bases igualitarias de los derechos y garantías fundamentales reconocidos en la Constitución Nacional, los Tratados Internacionales y las leyes.

Artículo 14. El Estado en todas sus jurisdicciones, ya sea nacional, provincial o municipal, favorecerá las iniciativas tendientes a la integración de los extranjeros en su comunidad de residencia, especialmente las tendientes a:

a) La realización de cursos de idioma castellano en las escuelas e instituciones culturales extranjeras legalmente reconocidas;

b) La difusión de información útil para la adecuada inserción de los extranjeros en la sociedad argentina, en particular aquella relativa a sus derechos y obligaciones;

c) Al conocimiento y la valoración de las expresiones culturales, recreativas, sociales, económicas y religiosas de los inmigrantes;

d) La organización de cursos de formación, inspirados en criterios de convivencia en una sociedad multicultural y de prevención de comportamientos discriminatorios, destinados a los funcionarios y empleados públicos y de entes privados.

Artículo 15. Los extranjeros que sean admitidos en el país como "residentes permanentes" podrán introducir sus efectos personales, artículos para su hogar y automóvil, libres del pago de impuestos, recargos, tasas de importación y contribuciones de cualquier naturaleza, con los alcances y hasta el monto que determine el Poder Ejecutivo.

Artículo 16. La adopción por el Estado de todas las medidas necesarias y efectivas para eliminar la contratación laboral en el territorio nacional de inmigrantes en situación irregular, incluyendo la imposición de sanciones a los empleadores, no menoscabará los derechos de los trabajadores inmigrantes frente a sus empleadores en relación con su empleo.

Artículo 17. El Estado proveerá lo conducente a la adopción e implementación de medidas tendientes a regularizar la situación migratoria de los extranjeros.

Capítulo II
De las obligaciones de los inmigrantes y atribuciones del Estado

Artículo 18. Sin perjuicio de los derechos enumerados en la presente ley, los migrantes deberán cumplir con las obligaciones enunciadas en la Constitución Nacional, los Tratados Internacionales adheridos y las leyes vigentes.

Artículo 19. Respecto de cualquier extranjero, la República Argentina podrá orientarlo con respecto a:

a) El acceso a categorías limitadas de empleo, funciones, servicios o actividades, cuando ello sea necesario en beneficio del Estado;

b) La elección de una actividad remunerada de conformidad con la legislación relativa a las condiciones de reconocimiento de calificaciones profesionales adheridas fuera del territorio;

c) Las condiciones por las cuales, habiendo sido admitido para ejercer un empleo, pueda luego ser autorizado a realizar trabajos por cuenta propia, teniendo en consideración el período de residencia legal en el país y las demás condiciones establecidas en la reglamentación.

Título II
De la admisión de extranjeros a la República Argentina y sus excepciones

Capítulo I
De las categorías y plazos de admisión

Artículo 20. Los extranjeros serán admitidos para ingresar y permanecer en el país en las categorías de "residentes permanentes", "residentes temporarios", o "residentes transitorios". Hasta tanto se formalice el trámite correspondiente, la autoridad de aplicación podrá conceder una autorización de "residencia precaria", que será revocable por la misma, cuando se desnaturalicen los motivos que se tuvieron en cuenta para su otorgamiento. Su validez será de hasta ciento ochenta (180) días corridos, pudiendo ser renovables hasta la resolución de la admisión solicitada, y habilitará a sus titulares para permanecer, salir y reingresar al territorio nacional, trabajar y estudiar durante su período de vigencia.

La extensión y renovación de "residencia precaria" no genera derecho a una resolución favorable respecto de la admisión solicitada.

Artículo 21. Las solicitudes de ingreso al país que se peticionen en el territorio nacional o en el extranjero, deberán formalizarse en las condiciones de la presente ley.

Artículo 22. Se considerará "residente permanente" a todo extranjero que, con el propósito de establecerse definitivamente en el país, obtenga de la Dirección Nacional de Migraciones una admisión en tal carácter. Asimismo, se considerarán residentes permanentes los inmigrantes parientes de ciudadanos argentinos, nativos o por opción, entendiéndose como tales al cónyuge, hijos y padres.

A los hijos de argentinos nativos o por opción que nacieren en el extranjero se les reconoce la condición de residentes permanentes. Las autoridades permitirán su libre ingreso y permanencia en el territorio.

Artículo 23. Se considerarán "residentes temporarios" todos aquellos extranjeros que, bajo las condiciones que establezca la reglamentación, ingresen al país en las siguientes subcategorías:

a) Trabajador migrante: quien ingrese al país para dedicarse al ejercicio de alguna actividad lícita, remunerada, con autorización para permanecer en el país por un máximo de tres (3) años, prorrogables, con entradas y salidas múltiples, con permiso para trabajar bajo relación de dependencia.

b) Rentista: quien solvente su estadía en el país con recursos propios traídos desde el exterior, de las rentas que éstos produzcan o de cualquier otro ingreso lícito proveniente de fuentes externas. Podrá concederse un término de residencia de hasta tres (3) años, prorrogables, con entradas y salidas múltiples.

c) Pensionado: quien perciba de un gobierno o de organismos internacionales o de empresas particulares por servicios prestados en el exterior, una pensión cuyo monto le permita un ingreso pecuniario regular y permanente en el país. Podrá concederse un término de residencia de hasta tres (3) años, prorrogables, con entradas y salidas múltiples.

d) Inversionista: quien aporte sus propios bienes para realizar actividades de interés para el país. Podrá concederse un término de residencia de hasta tres (3) años, prorrogables, con entradas y salidas múltiples.

e) Científicos y personal especializado: quienes se dediquen a actividades científicas, de investigación, técnicas, o de asesoría, contratados por entidades públicas o privadas para efectuar trabajos de su especialidad. De igual forma, directivos, técnicos y personal administrativo de entidades públicas o privadas extranjeras de carácter comercial o industrial, trasladados desde el exterior para cubrir cargos específicos en sus empresas y que devenguen honorarios o salarios en la República Argentina. Podrá concederse un término de residencia de hasta tres (3) años, prorrogables, con entradas y salidas múltiples.

f) Deportistas y artistas: contratados en razón de su especialidad por personas físicas o jurídicas que desarrollan actividades en el país. Podrá concederse un término de residencia de hasta tres (3) años, prorrogables, con entradas y salidas múltiples.

g) Religiosos de cultos reconocidos oficialmente, con personería jurídica expedida por el Ministerio de Relaciones Exteriores, Comercio Internacional y Culto, que ingresen al país para desarrollar en forma exclusiva actividades propias de su culto. Podrá concederse un término de residencia de hasta tres (3) años, prorrogables, con entradas y salidas múltiples.

h) Pacientes bajo tratamientos médicos: para atender problemas de salud en establecimientos sanitarios públicos o privados, con autorización para permanecer en el país por un año, prorrogable, con entradas y salidas múltiples. En caso de personas menores de edad, discapacitados o enfermos que por la importancia de su patología debieran permanecer con acompañantes, esta autorización se hará extensiva a los familiares directos, representante legal o curador.

i) Académicos: para quienes ingresen al país en virtud de acuerdos académicos celebrados entre instituciones de educación superior en áreas especializadas, bajo la responsabilidad del centro superior contratante. Su vigencia será por el término de hasta un (1) año, prorrogable por idéntico período cada uno, con autorización de entradas y salidas múltiples.

j) Estudiantes: quienes ingresen al país para cursar estudios secundarios, terciarios, universitarios o especializados reconocidos, como alumnos regulares en establecimientos educativos públicos o privados reconocidos oficialmente, con autorización para permanecer en el país por dos (2) años, prorrogables, con entradas y salidas múltiples. El interesado deberá demostrar la inscripción en la institución educativa en la que cursará sus estudios y, para las sucesivas renovaciones, certificación de su condición de estudiante regular.

k) Asilados y refugiados: Aquellos que fueren reconocidos como refugiados o asilados se les concederá autorización para residir en el país por el término de dos (2) años, prorrogables cuantas veces la autoridad de aplicación en materia de asilo y refugio lo estime necesario, atendiendo a las circunstancias que determine la legislación vigente en la materia.

l) Nacionalidad: Ciudadanos nativos de Estados Parte del MERCOSUR, Chile y Bolivia, con autorización para permanecer en el país por dos (2) años, prorrogables con entradas y salidas múltiples; *(**Nota Infoleg**: Por artículo 1 de la Disposición N° 29929/2004 de la Dirección Nacional de Migraciones B.O. 21/9/2004 se considera que el detalle de países incluidos en el presente inciso es meramente enunciativo, debiendo considerarse incluidos a todos los Estados Parte y Asociados del MERCADO COMÚN DEL SUR (MERCOSUR).).*

m) Razones Humanitarias: Extranjeros que invoquen razones humanitarias que justifiquen a juicio de la Dirección Nacional de Migraciones un tratamiento especial.

n) Especiales: Quienes ingresen al país por razones no contempladas en los incisos anteriores y que sean consideradas de interés por el Ministerio del Interior y el Ministerio de Relaciones Exteriores, Comercio Internacional y Culto.

Artículo 24. Los extranjeros que ingresen al país como "residentes transitorios" podrán ser admitidos en algunas de las siguientes subcategorías:

a) Turistas;

b) Pasajeros en tránsito;

c) Tránsito vecinal fronterizo;

d) Tripulantes del transporte internacional;

e) Trabajadores migrantes estacionales;

f) Académicos;

g) Tratamiento médico;

h) Especiales: Extranjeros que invoquen razones que justifiquen a juicio de la Dirección Nacional de Migraciones un tratamiento especial.

Artículo 25. Los extranjeros admitidos en el país como "residentes temporarios" o "residentes transitorios" podrán permanecer en el territorio nacional durante el plazo de permanencia autorizado, con sus debidas prórrogas, debiendo abandonar el mismo al expirar dicho plazo.

Artículo 26. El procedimiento, requisitos y condiciones para ingresar al país, según las categorías y subcategorías mencionadas, serán fijados en el Reglamento de Migraciones.

Si por responsabilidad del organismo interviniente, los trámites demoraran más de lo estipulado, la Dirección Nacional de Migraciones deberá tomar todos los recaudos pertinentes a fin de evitar que los extranjeros, a la espera de la regularización de su residencia en el país, tengan inconvenientes derivados de tal demora.

Artículo 27. Quedan excluidos del ámbito de aplicación de esta ley, a condición de reciprocidad, los extranjeros que fueren:

a) Agentes diplomáticos y los funcionarios consulares acreditados en la República, así como los demás miembros de las Misiones diplomáticas permanentes o especiales y de las oficinas consulares y sus familiares que, en virtud de las normas del derecho internacional, estén exentos de las obligaciones relativas a la obtención de una categoría migratoria de admisión;

b) Representantes y delegados, así como los demás miembros y sus familiares de las Misiones permanentes o de las Delegaciones ante los Organismos Intergubernamentales con sede en la República o en Conferencias Internacionales que se celebren en ella;

c) Funcionarios destinados en Organizaciones Internacionales o Intergubernamentales con sede en la República, así como sus familiares, a quienes los Tratados en los que la República sea parte eximan de la obligación de visación consular;

d) Titulares de visas argentinas diplomáticas, oficiales o de cortesía.

De no mediar Convenio o Tratado celebrado por la República, la admisión, ingreso, permanencia y egreso de los extranjeros contemplados en el presente artículo se regirán por las disposiciones que al efecto establezca el Poder Ejecutivo nacional.

En los casos previstos en el presente artículo la Dirección Nacional de Migraciones se limitará al contralor de la documentación en el momento del ingreso o del egreso, dejando constancia en la misma del carácter del ingreso; de la fecha del egreso y del plazo de permanencia en la República.

Artículo 28. Los extranjeros incluidos en Acuerdos o Convenios de Migraciones suscritos por la República Argentina se regirán por lo dispuesto en los mismos y por esta ley, en el supuesto más favorable para la persona migrante. El principio de igualdad de trato no se considerará afectado por la posibilidad que tiene el Estado, conforme a los procedimientos establecidos en la Constitución y las leyes, de firmar acuerdos bilaterales de alcance general y parcial, que permitan atender fenómenos específicos, como el de la migración laboral fronteriza, ni por la posibilidad de establecer esquemas diferenciados de tratamiento entre los países que con la Argentina forman parte de una región respecto de aquellos países que resulten terceros dentro del proceso de regionalización, priorizando las medidas necesarias para el logro del objetivo final de la libre circulación de personas en el MERCOSUR.

Capítulo II
De los impedimentos

Artículo 29. Serán causas impedientes del ingreso y permanencia de extranjeros al Territorio Nacional:

a) La presentación ante la autoridad de documentación nacional o extranjera material o ideológicamente falsa o adulterada. El hecho será sancionado con una prohibición de reingreso por un lapso mínimo de cinco (5) años;

b) Tener prohibido el ingreso, haber sido objeto de medidas de expulsión o de prohibición de reingreso, hasta tanto las mismas no hayan sido revocadas o se hubiese cumplido el plazo impuesto al efecto;

c) Haber sido condenado o estar cumpliendo condena, en la Argentina o en el exterior, o tener antecedentes por tráfico de armas, de personas, de estupefacientes o por lavado de dinero o inversiones en actividades ilícitas o delito que merezca para la legislación argentina pena privativa de la libertad de tres (3) años o más;

d) Haber incurrido o participado en actos de gobierno o de otro tipo, que constituyan genocidio, crímenes de guerra, actos de terrorismo o delitos de lesa humanidad y de todo otro acto susceptible de ser juzgado por el Tribunal Penal Internacional;

e) Tener antecedentes por actividades terroristas o por pertenecer a organizaciones nacional o internacionalmente reconocidas como imputadas de acciones susceptibles de ser juzgadas por el Tribunal Penal Internacional o por la Ley Nº 23077, de Defensa de la Democracia;

f) Haber sido condenado en la Argentina o tener antecedentes por promover o facilitar, con fines de lucro, el ingreso, la permanencia o el egreso ilegales de extranjeros en el Territorio Nacional;

g) Haber sido condenado en la Argentina o tener antecedentes por haber presentado documentación material o ideológicamente falsa, para obtener para sí o para un tercero un beneficio migratorio;

h) Promover la prostitución; lucrar con ello; haber sido condenado o tener antecedentes, en la Argentina o en el exterior por haber promovido la prostitución; por lucrar con ello o por desarrollar actividades relacionadas con el tráfico o la explotación sexual de personas;

i) Intentar ingresar o haber ingresado al Territorio Nacional eludiendo el control migratorio o por lugar o en horario no habilitados al efecto;

j) Constatarse la existencia de alguno de los impedimentos de radicación establecidos en la presente ley;

k) El incumplimiento de los requisitos exigidos por la presente ley.

En el caso del inciso a) el Gobierno Federal se reserva la facultad de juzgar a la persona en la República cuando el hecho pueda relacionarse con cuestiones relativas a la seguridad del Estado, a la cooperación internacional o resulte posible vincular al mismo o a los hechos que se le imputen con otras investigaciones sustanciadas en el Territorio Nacional.

La Dirección Nacional de Migraciones, previa intervención del Ministerio del Interior, podrá admitir, excepcionalmente, por razones humanitarias o de reunificación familiar, en el país en las categorías de residentes permanentes o temporarios, mediante resolución fundada en cada caso particular, a los extranjeros comprendidos en el presente artículo.

Capítulo III
De los documentos

Artículo 30. Podrán obtener el Documento Nacional de Identidad, los extranjeros con residencia permanente o temporaria.

Artículo 31. Los solicitantes de refugio o asilo, con autorización de residencia precaria, podrán obtener su Documento Nacional de Identidad una vez reconocidos como "refugiados" o "asilados" por la autoridad competente.

Artículo 32. Cuando se trate de extranjeros autorizados en calidad de "residentes temporarios" el Documento Nacional de Identidad se expedirá por el mismo plazo que corresponda a la subcategoría migratoria otorgada, renovable conforme a las prórrogas que se autoricen.

Artículo 33. En los casos precedentes, en el documento identificatorio a otorgarse, deberá dejarse expresa y visible constancia de:

a) La nacionalidad del titular;

b) El carácter permanente o temporario de la residencia en el país;

c) Actuación en la que se otorgó el beneficio y número de resolución;

d) Plazo de la residencia autorizada y vencimiento.

Título III
Del ingreso y egreso de personas

Capítulo I
Del ingreso y egreso

Artículo 34. El ingreso y egreso de personas al territorio nacional se realizará exclusivamente por los lugares habilitados por la Dirección Nacional de Migraciones, sean éstos terrestres, fluviales, marítimos o aéreos, oportunidad y lugar en que serán sometidos al respectivo control migratorio.

Se podrá autorizar la entrada al país de los extranjeros que no reúnan los requisitos establecidos en la ley y su reglamentación, cuando existan razones excepcionales de índole humanitaria, interés público o cumplimiento de compromisos adquiridos por la Argentina.

Artículo 35. En el supuesto de arribar una persona al territorio de la República con un documento extranjero destinado a acreditar su identidad que no cumpliera las condiciones previstas en la legislación vigente, y en tanto no se trate de un reingreso motivado por un rechazo de un tercer país, se procederá al inmediato rechazo en frontera impidiéndosele el ingreso al territorio nacional.

Aquellos rechazos que se produjeran motivados en la presentación de documentación material o ideológicamente falsa o que contengan atestaciones apócrifas implicarán una prohibición de reingreso de cinco (5) años.

Sin perjuicio de los procedimientos previstos en el presente artículo, el Gobierno Nacional se reserva la facultad de denunciar el hecho ante la Justicia Federal cuando se encuentren en juego cuestiones relativas a la seguridad del Estado, a la cooperación internacional, o resulte posible vincular al mismo o a los hechos que se le imputen, con otras investigaciones sustanciadas en el territorio nacional.

Cuando existiera sospecha fundada que la real intención que motiva el ingreso difiere de la manifestada al momento de obtener la visa o presentarse ante el control migratorio, y hasta tanto se corrobore la misma, no se autorizará su ingreso al territorio argentino y deberá permanecer en las instalaciones del punto de ingreso. Si resultare necesario para preservar la salud e integridad física de la persona, la autoridad migratoria, reteniendo la documentación de la misma, le otorgará una autorización provisoria de permanencia que no implicará ingreso legal a la República Argentina.

Asimismo se comunicará a la empresa transportadora que se mantiene vigente su obligación de reconducción hasta tanto la autorización provisoria de permanencia sea transformada en ingreso legal.

Si tras la corroboración se confirmara el hecho se procederá a la inmediata cancelación de la autorización provisoria de permanencia y al rechazo del extranjero.

Las decisiones adoptadas en virtud de las previsiones contenidas en los párrafos primero y segundo del presente artículo sólo resultarán recurribles desde el exterior, mediante presentación efectuada por el extranjero ante las delegaciones diplomáticas argentinas o las oficinas en el extranjero de la Dirección Nacional de Migraciones, desde donde se harán llegar a la sede central de la Dirección Nacional de Migraciones. El plazo para presentar el recurso será de quince (15) días a contar del momento del rechazo.

Artículo 36. La autoridad migratoria podrá impedir la salida del país a toda persona que no se encuentre en posesión de la documentación necesaria, conforme a lo dispuesto por esta ley y su reglamentación.

Artículo 37. El extranjero que ingrese a la República por lugar no habilitado a tal efecto, o eludiendo cualquier forma de contralor migratorio, será pasible de expulsión en los términos y condiciones de la presente ley.

Capítulo II
De las obligaciones de los medios de transporte internacional

Artículo 38. El capitán, comandante, armador, propietario, encargado o responsable de todo medio de transporte de personas, para o desde la República, ya sea marítimo, fluvial, aéreo o terrestre, y las compañías, empresas o agencias propietarias, explotadoras o consignatarias de un medio de transporte serán responsables solidariamente de la conducción y transporte de pasajeros y tripulantes en condiciones reglamentarias.

Artículo 39. De igual forma y modo, los mencionados en el artículo anterior, serán responsables por el cuidado y custodia de los pasajeros y tripulantes, hasta que hayan pasado el examen de contralor migratorio y hayan ingresado en la República, o verificada la documentación al egresar.

Artículo 40. Al rehusar la autoridad migratoria el ingreso de cualquier persona, el capitán, comandante, armador, propietario, encargado o responsable del medio de transporte y de las compañías, empresas o agencias, quedarán obligados a reconducirla a su país de origen o procedencia, o fuera del territorio de la República en el medio de transporte en que llegó, o en caso de imposibilidad, en otro medio dentro del plazo perentorio que se le fije, siendo a su cargo los gastos que ello ocasione.

Artículo 41. El capitán, comandante, armador, propietario, encargado o responsable de un medio de transporte de personas al país, o desde el mismo o en el mismo, ya sea marítimo, fluvial, aéreo o terrestre, o la compañía, empresa o agencia propietaria, consignataria, explotadora o responsable, quedan obligados solidariamente a transportar a su cargo, en el plazo que se le fije, fuera del territorio argentino, o hasta el lugar de frontera, a todo extranjero cuya expulsión resuelva y su transporte disponga la autoridad migratoria, de conformidad con lo establecido en la presente ley.

Artículo 42. Los artículos precedentes no serán de aplicación en el supuesto de extranjeros que soliciten el status de refugio o asilo en el país; en estos casos, la obligación para las personas que describen los artículos 40 y 41 se reducirá a dar cuenta de inmediato de tal situación a la autoridad con competencia en materia de refugio y asilo.

Artículo 43. La obligación de transporte establecida en los artículos 40 y 41 se limitará a:

a) Una (1) plaza por viaje, cuando la capacidad del medio de transporte no exceda de cincuenta (50) plazas en los medios internacionales aéreos, marítimos, fluviales o terrestres y en los de carácter interno, cuando la capacidad no exceda de treinta (30) plazas;

b) Dos (2) plazas cuando la capacidad del medio de transporte fuera superior a la indicada para cada caso en el inciso a);

c) Cuando la expulsión se motivara en fallas en la documentación de ingreso del extranjero detectadas al momento de controlar el mismo y debiera efectivizarse con custodia, la empresa de transporte utilizada para el ingreso deberá hacerse cargo de los pasajes de ida y vuelta del personal de custodia y de los viáticos que le correspondieran.

En todos los casos deberá preverse expresamente el mecanismo de intereses que correspondiere.

Artículo 44. El límite dispuesto por el artículo anterior no regirá cuando las personas a transportar:

a) Integren un grupo familiar;

b) Deban ser transportadas por la misma compañía a la cual pertenece el medio en el que ingresaron;

c) Sean de la nacionalidad del país de bandera o matrícula del medio en que se efectuará el transporte.

Artículo 45. Las obligaciones emergentes de los artículos 40, 41, 43 y 44 serán consideradas carga pública.

Artículo 46. El incumplimiento de las disposiciones previstas en el presente Título y sus reglamentaciones, será sancionado por la Dirección Nacional de Migraciones con una multa cuyo monto será de hasta el triple de la tarifa en el medio de transporte utilizado desde el punto de origen hasta el punto de destino en territorio nacional, al valor vigente al momento de la imposición de la multa. En ningún caso las multas podrán ser inferiores al equivalente a mil doscientos diecinueve (1.219) litros de gasoil al precio subsidiado para transportistas o en ausencia de éste al más bajo del mercado para consumidor particular al día de la imposición de la multa; ni superiores al equivalente a treinta mil cuatrocientos ochenta y siete (30.487) litros de gasoil al precio subsidiado para transportistas o en ausencia de éste al más bajo del mercado para consumidor particular al día de la imposición de la multa.

En caso de mora en el pago de la multa se devengarán los correspondientes intereses.

Artículo 47. La sanción será aplicada solidariamente al capitán, comandante, armador, propietario, encargado o responsable del medio de transporte y a la compañía, empresa o agencia propietaria, explotadora, consignataria o responsable del mismo.

El Ministerio del Interior, a propuesta de la Dirección Nacional de Migraciones, aprobará el nomenclador regulador del monto de las multas impuestas por infracciones a las previsiones del presente título. A tal efecto se tendrán en cuenta la naturaleza de la infracción, la condición jurídica del infractor, sus antecedentes y reincidencias en las infracciones a la presente ley o su reglamentación.

La Dirección Nacional de Migraciones queda facultada a fijar la forma y modo de pago de las multas que se impongan en función de las previsiones de la presente ley.

Artículo 48. En los casos de incumplimiento de las obligaciones previstas en los artículos 40, 41, 43 y 44 de la presente, la autoridad de aplicación podrá disponer la interdicción provisoria de salida del territorio nacional, espacio aéreo o aguas jurisdiccionales argentinas, del medio de transporte correspondiente.

La misma se hará efectiva por medio de la Policía Migratoria Auxiliar o la Autoridad Nacional con jurisdicción sobre el transporte.

Artículo 49. Podrán imponerse cauciones reales en efectivo o documentarias a las empresas, compañías o agencias propietarias, consignatarias, explotadoras o responsables de cualquier medio de transporte, en garantía del cumplimiento de las obligaciones de reconducir o transportar que se dicten en virtud de lo dispuesto por la presente ley.

Artículo 50. La autoridad de aplicación establecerá el monto de las cauciones y las modalidades, plazos y condiciones de su prestación, así como los requisitos para su cancelación, devolución o percepción.

Título IV
De la permanencia de los extranjeros

Capítulo I
Del trabajo y alojamiento de los extranjeros

Artículo 51. Los extranjeros admitidos o autorizados como "residentes permanentes" podrán desarrollar toda tarea o actividad remunerada o lucrativa, por cuenta propia o en relación de dependencia, gozando de la protección de las leyes que rigen la materia. Los extranjeros admitidos o autorizados como "residentes temporarios" podrán desarrollarlas sólo durante el período de su permanencia autorizada.

Artículo 52. Los extranjeros admitidos o autorizados como "residentes transitorios" no podrán realizar tareas remuneradas o lucrativas, ya sea por cuenta propia o en relación de dependencia, con excepción de los incluidos en la subcategoría de "trabajadores migrantes estacionales", o salvo que fueran expresamente autorizados por la Dirección Nacional de Migraciones de conformidad con lo dispuesto por la presente ley o en Convenios de Migraciones suscritos por la República Argentina. Los extranjeros a los que se les hubiera autorizado una residencia precaria podrán ser habilitados para trabajar por el plazo y con las modalidades que establezca la Dirección Nacional de Migraciones.

Artículo 53. Los extranjeros que residan irregularmente en el país no podrán trabajar o realizar tareas remuneradas o lucrativas, ya sea por cuenta propia o ajena, con o sin relación de dependencia.

Artículo 54. Los extranjeros mantendrán actualizados ante la Dirección Nacional de Migraciones, por la vía y plazos que se indique en la reglamentación, los datos referidos a su domicilio, en donde se considerarán válidas todas las notificaciones.

Capítulo II
De las responsabilidades y obligaciones de los dadores de trabajo, alojamiento y otros

Artículo 55. No podrá proporcionarse alojamiento a título oneroso a los extranjeros que se encuentren residiendo irregularmente en el país.

Asimismo, ninguna persona de existencia visible o ideal, pública o privada, podrá proporcionar trabajo u ocupación remunerada, con o sin relación de dependencia, a los extranjeros que residan irregularmente.

Artículo 56. La aplicación de la presente ley no eximirá al empleador o dador de trabajo del cumplimiento de las obligaciones emergentes de la legislación laboral respecto del extranjero, cualquiera sea su condición migratoria; asimismo, en ningún modo se afectarán los derechos adquiridos por los extranjeros, como consecuencia de los trabajos ya realizados, cualquiera sea su condición migratoria.

Artículo 57. Quien contrate o convenga con extranjeros que residan irregularmente en el país, la adquisición, venta o constitución de gravamen sobre bienes inmuebles, derechos o muebles registrables, o la constitución o integración de sociedades civiles o comerciales, deberá comunicarlo fehacientemente a la autoridad migratoria.

Artículo 58. Los actos celebrados con los requisitos formales inherentes a los mismos, aun cuando no se cumpliere con la exigencia del artículo anterior, serán considerados válidos.

Artículo 59. Quienes infrinjan las disposiciones establecidas en el artículo 55, primer párrafo de la presente, serán sancionados solidariamente con una multa cuyo monto ascenderá a veinte (20) Salarios Mínimo Vital y Móvil por cada extranjero al que se proporcione alojamiento a título oneroso.

Quienes infrinjan las disposiciones establecidas en el artículo 55, segundo párrafo de la presente, serán sancionados solidariamente con una multa cuyo monto ascenderá a cincuenta (50) Salarios Mínimo Vital y Móvil por cada extranjero, carente de habilitación migratoria para trabajar, al que se proporcione trabajo u ocupación remunerada.

El monto de la sanción a imponer será de cien (100) Salarios Mínimo Vital y Móvil cuando se proporcione trabajo u ocupación remunerada a extranjeros no emancipados o menores de catorce (14) años.

La reincidencia se considerará agravante de la infracción y elevará el monto de la multa impuesta hasta en un cincuenta por ciento (50%).

La Dirección Nacional de Migraciones mediando petición del infractor que acredite falta de medios suficientes podrá excepcionalmente, mediante disposición fundada, disponer para el caso concreto una disminución del monto de la multa a imponer o autorizar su pago en cuotas. A tal efecto se merituará la capacidad económica del infractor y la posible reincidencia que pudiera registrar en la materia. En ningún caso la multa que se imponga será inferior a dos (2) Salarios Mínimos Vital y Móvil.

Facúltase al Ministerio del Interior a establecer mecanismos alternativos de sanciones a las infracciones previstas en el presente Título —De las responsabilidades de los empleadores, dadores de trabajo y alojamiento—, basadas en la protección del migrante, la asistencia y acción social.

Artículo 60. Las sanciones serán graduadas de acuerdo con la naturaleza de la infracción, la persona, antecedentes en la materia y en caso de reincidencia en las infracciones a la presente ley, las mismas serán acumulativas y progresivas.

Título V
De la legalidad e ilegalidad de la permanencia

Capítulo I
De la declaración de ilegalidad y cancelación de la permanencia

Artículo 61. Al constatar la irregularidad de la permanencia de un extranjero en el país, y atendiendo a las circunstancias de profesión del extranjero, su parentesco con nacionales argentinos, el plazo de permanencia acreditado y demás condiciones personales y sociales, la Dirección Nacional de Migraciones deberá conminarlo a regularizar su situación en el plazo perentorio que fije para tal efecto, bajo apercibimiento de decretar su expulsión. Vencido el plazo sin que se regularice la situación, la Dirección Nacional de Migraciones decretará su expulsión con efecto suspensivo y dará intervención y actuará como parte ante el Juez o Tribunal con competencia en la materia, a efectos de la revisión de la decisión administrativa de expulsión.

Artículo 62. La Dirección Nacional de Migraciones, sin perjuicio de las acciones judiciales que correspondieran deducir, cancelará la residencia que hubiese otorgado, con efecto suspensivo, cualquiera fuese su antigüedad, categoría o causa de la admisión y dispondrá la posterior expulsión, cuando:

a) Con la finalidad de obtener un beneficio migratorio o la ciudadanía argentina se hubiese articulado un hecho o un acto simulado o éste hubiese sido celebrado en fraude a la ley o con vicio del consentimiento o se hubiere presentado documentación material o ideológicamente falsa o adulterada.

b) El residente hubiese sido condenado judicialmente en la República por delito doloso que merezca pena privativa de libertad mayor de cinco (5) años o registrase una conducta reiterante en la comisión de delitos. En el primer supuesto cumplida la condena, deberá transcurrir un plazo de dos (2) años para que se dicte la resolución definitiva de

cancelación de residencia, la que se fundamentará en la posible incursión por parte del extranjero en los impedimentos previstos en el artículo 29 de la presente ley. En caso de silencio de la Administración, durante los treinta (30) días posteriores al vencimiento de dicho plazo, se considerará que la residencia queda firme.

c) El beneficiario de una radicación permanente hubiese permanecido fuera del Territorio Nacional por un período superior a los dos (2) años o la mitad del plazo acordado, si se tratara de residencia temporaria, excepto que la ausencia obedeciere al ejercicio de una función pública argentina o se hubiese generado en razón de actividades, estudios o investigaciones que a juicio de la Dirección Nacional de Migraciones pudieran ser de interés o beneficiosa para la República Argentina o que mediara autorización expresa de la autoridad migratoria la que podrá ser solicitada por intermedio de las autoridades consulares argentinas.

d) Asimismo será cancelada la residencia permanente, temporaria o transitoria concedida cuando se hayan desnaturalizado las razones que motivaron su concesión o cuando la instalación en el país hubiera sido subvencionada total o parcialmente, directa o indirectamente por el Estado Argentino y no se cumplieran o se violaren las condiciones expresamente establecidas para la subvención.

e) El Ministerio del Interior podrá disponer la cancelación de la residencia permanente o temporaria y la expulsión de la República de todo extranjero, cualquiera sea la situación de residencia, cuando realizare en el país o en el exterior, cualquiera de las actividades previstas en los incisos d) y e) del artículo 29 de la presente.

El Ministerio del Interior dispensará el cumplimiento de la cancelación prevista en virtud del presente artículo cuando el extranjero fuese padre, hijo o cónyuge de argentino, salvo decisión debidamente fundada por parte de la autoridad migratoria.

Asimismo, dicha dispensa podrá ser otorgada teniendo en cuenta el plazo de permanencia, legal inmediata anterior a la ocurrencia de alguna de las causales previstas en los incisos a) a d) del presente artículo, el que no podrá ser inferior a dos (2) años, debiendo tenerse en cuenta las circunstancias personales y sociales del beneficiario.

Artículo 63. En todos los supuestos previstos por la presente ley:

a) La cancelación de la residencia conlleva la conminación a hacer abandono del país dentro del plazo que se fije o la expulsión del Territorio Nacional tomando en consideración las circunstancias fácticas y personales del interesado, según lo establezca la Reglamentación.

b) La expulsión lleva implícita la prohibición de reingreso permanente o por un término que en ningún caso podrá ser inferior a cinco (5) años y se graduará según la importancia de la causa que la motivara. Dicha prohibición sólo podrá ser dispensada por la Dirección Nacional de Migraciones.

Artículo 64. Los actos administrativos de expulsión firmes y consentidos dictados respecto de extranjeros que se encuentren en situación irregular, se ejecutarán en forma inmediata cuando se trate de:

a) Extranjeros que se encontraren cumpliendo penas privativas de libertad, cuando se hubieran cumplido los supuestos establecidos en los acápites I y II del artículo 17 de la Ley Nº 24660 que correspondieren para cada circunstancia. La ejecución del extrañamiento dará por cumplida la pena impuesta originalmente por el Tribunal competente.

b) Extranjeros sometidos a proceso, cuando sobre los mismos recayere condena firme de ejecución condicional. La ejecución del extrañamiento dará por cumplida la pena impuesta originalmente por el Tribunal competente.

c) El procesamiento de un extranjero sobre el que pesa orden administrativa de expulsión firme y consentida, en cuyo caso no procederá el otorgamiento del beneficio de la suspensión del juicio a prueba o de medidas curativas, las que serán reemplazadas por la ejecución del extrañamiento, dándose por cumplida la carga impuesta al extranjero.

Artículo 65. Ningún extranjero o familiar suyo será privado de su autorización de residencia ni expulsado por el solo hecho de no cumplir una obligación emanada de un contrato de trabajo, a menos que el cumplimiento de esa obligación constituya condición necesaria para dicha autorización o permiso.

Artículo 66. Los extranjeros y sus familiares no podrán ser objeto de medidas de expulsión colectiva. Cada caso de expulsión será examinado y decidido individualmente.

Artículo 67. La expulsión no menoscabará por sí sola ninguno de los derechos que haya adquirido el migrante de conformidad con la legislación nacional, incluido el derecho a recibir los salarios y toda otra prestación que le pudiere corresponder.

Artículo 68. El interesado deberá contar con oportunidad razonable, aun después de la partida, para reclamar lo concerniente al pago de los salarios y otras prestaciones que le pudieren corresponder, así como para cumplimentar sus obligaciones pendientes. Los gastos a que dé lugar el procedimiento de expulsión de un migrante o un familiar suyo estarán a cargo de la autoridad de aplicación. Podrá exigírsele que pague sus propios gastos de viaje desde el puesto de salida hasta su lugar de destino, sin perjuicio de lo previsto en el Título III.

Artículo 69. A aquellos extranjeros a quienes se impidiere hacer abandono del país por disposición judicial, la autoridad de migración les concederá autorización de "residencia precaria".

Capítulo II
De las medidas cautelares

Artículo 70. Firme y consentida la expulsión de un extranjero, el Ministerio del Interior o la Dirección Nacional de Migraciones, solicitarán a la autoridad judicial competente que ordene su retención, mediante resolución fundada, al solo y único efecto de cumplir aquélla.

Excepcionalmente y cuando las características del caso lo justificare, la Dirección Nacional de Migraciones o el Ministerio del Interior podrán solicitar a la autoridad judicial la retención del extranjero aun cuando la orden de expulsión no se encuentre firme y consentida.

Producida tal retención y en el caso que el extranjero retenido alegara ser padre, hijo o cónyuge de argentino nativo, siempre que el matrimonio se hubiese celebrado con anterioridad al hecho que motivara la resolución, la Dirección Nacional de Migraciones deberá suspender la expulsión y constatar la existencia del vínculo alegado en un plazo de cuarenta y ocho (48) horas hábiles. Acreditado que fuera el vínculo el extranjero recuperará en forma inmediata su libertad y se habilitará respecto del mismo, un procedimiento sumario de regularización migratoria.

En todos los casos el tiempo de retención no podrá exceder el estrictamente indispensable para hacer efectiva la expulsión del extranjero.

Producida la retención, se dará inmediato conocimiento de la misma al Juzgado que hubiere dictado la orden a tal efecto.

Artículo 71. Hecha efectiva la retención de un extranjero, la autoridad de aplicación podrá disponer su libertad provisoria bajo caución real o juratoria que fijen en cada caso, cuando no pueda realizarse la expulsión en un plazo prudencial o medien causas que lo justifiquen.

Dicha decisión deberá ser puesta en conocimiento del Juez Federal competente en forma inmediata.

Artículo 72. La retención se hará efectiva por los organismos integrantes de la policía migratoria auxiliar, los que alojarán a los detenidos en sus dependencias o donde lo disponga la Dirección Nacional de Migraciones, hasta su salida del territorio nacional.

Cuando por razones de seguridad o por las condiciones personales del expulsado, se haga necesaria su custodia hasta el lugar de destino, la autoridad migratoria podrá disponerla y requerirla de la policía migratoria auxiliar. En caso de necesidad, podrá solicitar asistencia médica.

Artículo 73. Las personas, compañías, empresas, asociaciones o sociedades que solicitaren el ingreso, la permanencia o la regularización de la situación migratoria de un extranjero en el país, deberán presentar caución suficiente, de acuerdo a lo que establezca la reglamentación.

Título VI
Del régimen de los recursos

Capítulo I
Del régimen de los recursos

Artículo 74. Contra las decisiones de la Dirección Nacional de Migraciones que revistan carácter de definitivas o que impidan totalmente la tramitación del reclamo o pretensión del interesado y contra los interlocutorios de mero trámite que lesionen derechos subjetivos o un interés legítimo, procederá la revisión en sede administrativa y judicial, cuando:

a) Se deniegue la admisión o la permanencia de un extranjero;

b) Se cancele la autorización de residencia permanente, temporaria o transitoria;

c) Se conmine a un extranjero a hacer abandono del país o se decrete su expulsión;

d) Se resuelva la aplicación de multas y cauciones o su ejecución.

Artículo 75. Podrán ser objeto de Recurso de Reconsideración los actos administrativos que resuelvan sobre las cuestiones enumeradas precedentemente.

Dicho recurso se interpondrá contra los actos dictados por la Dirección Nacional de Migraciones y serán resueltos por ésta.

En el caso de que el acto hubiese sido dictado por autoridad delegada, ésta será quien resuelva, sin perjuicio del derecho de avocación de la mencionada Dirección, salvo que la delegación hubiere cesado al tiempo de deducirse el recurso, supuesto en el cual resolverá el delegante.

El Recurso de Reconsideración deberá deducirse dentro de los diez (10) días hábiles de la notificación fehaciente del acto y ante el mismo órgano que lo dictó.

Artículo 76. La autoridad competente deberá resolver el Recurso de Reconsideración deducido, dentro de los treinta (30) días hábiles de su interposición. Vencido dicho plazo sin que hubiere una resolución al respecto, podrá reputarse denegado tácitamente, sin necesidad de requerir pronto despacho.

Artículo 77. El Recurso de Reconsideración lleva implícito el Recurso Jerárquico en Subsidio en el caso de decisiones adoptadas por autoridad delegada. Conforme a ello, cuando la reconsideración hubiese sido rechazada – expresa o tácitamente – las actuaciones deberán elevarse a la Dirección Nacional de Migraciones dentro del término de cinco (5)

días hábiles, de oficio – supuesto de denegatoria expresa – o a petición de parte – supuesto de silencio.

Dentro de los cinco (5) días hábiles de recibida por la Dirección Nacional de Migraciones, el interesado podrá mejorar o ampliar los fundamentos del recurso.

Artículo 78. Los actos administrativos que resuelvan sobre las cuestiones enumeradas en el artículo 74, podrán también ser objeto del Recurso Jerárquico a interponerse ante la autoridad emisora del acto recurrido dentro de los quince (15) días hábiles de su notificación fehaciente, y será elevado de oficio y dentro del término de cinco (5) días hábiles a la Dirección Nacional de Migraciones.

El Organismo citado deberá resolver el Recurso Jerárquico dentro de los treinta (30) días hábiles contados desde la recepción de las actuaciones.

La interposición del Recurso Jerárquico no requiere la previa deducción del Recurso de Reconsideración. Si se hubiere interpuesto éste, no será indispensable fundar nuevamente el Jerárquico.

Artículo 79. Contra los actos dispuestos por la Dirección Nacional de Migraciones en los términos del artículo 74, procederá a opción del interesado, el recurso administrativo de alzada o el recurso judicial pertinente.

Artículo 80. La elección de la vía judicial hará perder la administrativa; pero la interposición del recurso de alzada no impedirá desistirlo en cualquier estado a fin de promover la acción judicial, ni obstará a que se articule ésta una vez resuelto el recurso administrativo.

Artículo 81. El Ministro del Interior será competente para resolver en definitiva el recurso de alzada.

Artículo 82. La interposición de recursos, administrativos o judiciales, en los casos previstos en el artículo 74, suspenderá la ejecución de la medida dictada hasta tanto la misma quede firme.

Artículo 83. En los casos no previstos en este Título, serán de aplicación supletoria las disposiciones de la Ley Nº 19549, el Decreto N° 1759/72 y sus modificaciones.

Artículo 84. Agotada la vía administrativa a través de los Recursos de Reconsideración, Jerárquico o Alzada, queda expedita la vía recursiva judicial.

El plazo para la interposición del respectivo recurso, será de treinta (30) días hábiles a contar desde la notificación fehaciente al interesado.

Artículo 85. La parte interesada podrá solicitar judicialmente se libre orden de pronto despacho, la cual será procedente cuando la autoridad administrativa hubiere dejado vencer los plazos fijados o, en caso de no existir éstos, si hubiere transcurrido un plazo que exceda lo razonable para dictaminar. Presentado el pedido, el juez debe expedirse sobre su procedencia teniendo en cuenta las circunstancias del caso y, de entenderlo procedente, requerirá a la autoridad administrativa interviniente un informe acerca de las causas de la demora invocada, fijándole para ello un plazo. La decisión judicial será inapelable.

Contestado el requerimiento o vencido el plazo para hacerlo sin haber obtenido la resolución pertinente, el juez resolverá lo que corresponda con relación a la mora, librando – en su caso – la orden correspondiente a fin de que la autoridad administrativa responsable despache las actuaciones en el plazo que se establezca de acuerdo con la naturaleza y complejidad del caso pendiente.

Artículo 86. Los extranjeros que se encuentren en territorio nacional y que carezcan de medios económicos, tendrán derecho a asistencia jurídica gratuita en aquellos

procedimientos administrativos y judiciales que puedan llevar a la denegación de su entrada, al retorno a su país de origen o a la expulsión del territorio argentino. Además tendrán derecho a la asistencia de intérprete/s si no comprenden o hablan el idioma oficial. Las reglamentaciones a la presente, que en su caso se dicten, deberán resguardar el ejercicio del Derecho Constitucional de defensa.

Artículo 87. La imposibilidad de pago de las tasas establecidas para la interposición de recursos no podrán obstaculizar el acceso al régimen de recursos establecido en el presente Título.

Artículo 88. La imposibilidad del pago de la tasa prevista para la interposición de los recursos, no será obstáculo para acceder al régimen recursivo previsto en el presente capítulo.

Artículo 89. El recurso judicial previsto en el artículo 84, como la consecuente intervención y decisión del órgano judicial competente para entender respecto de aquéllos, se limitarán al control de legalidad, debido proceso y de razonabilidad del acto motivo de impugnación.

Capítulo II
De la revisión de los actos decisorios

Artículo 90. El Ministerio del Interior y la Dirección Nacional de Migraciones podrán rever, de oficio o a petición de parte, sus resoluciones y las de las autoridades que actúen por delegación. Serán susceptibles de revisión las decisiones cuando se comprueben casos de error, omisión o arbitrariedad manifiesta, violaciones al debido proceso, o cuando hechos nuevos de suficiente entidad justifiquen dicha medida.

Capítulo III
Del cobro de multas

Artículo 91. Las multas que se impongan en virtud de lo dispuesto por la presente ley, deberán ser abonadas dentro del plazo, en el lugar, forma y destino que determine la reglamentación.

Artículo 92. Contra las resoluciones que dispongan la sanción, multa o caución, procederá el recurso jerárquico previsto en los artículos 77 y 78, o el judicial contemplado en el artículo 84 de la presente. Este último deberá interponerse acreditando fehacientemente el previo depósito de la multa o cumplimiento de la caución impuesta.

Artículo 93. Cuando las multas impuestas de acuerdo con la presente ley no hubiesen sido satisfechas temporáneamente, la Dirección Nacional de Migraciones, perseguirá su cobro judicial, por vía de ejecución fiscal, dentro del término de sesenta (60) días de haber quedado firmes.

La certificación emanada de dicho organismo será título ejecutivo suficiente a tales efectos. La Justicia Federal será competente para entender en la vía ejecutiva.

Artículo 94. A los fines previstos en el artículo anterior, y en los casos en que deba presentarse ante jueces y tribunales, la Dirección Nacional de Migraciones tendrá personería para actuar en juicio.

Artículo 95. Los domicilios constituidos en las respectivas actuaciones administrativas serán válidos en el procedimiento judicial.

Capítulo IV
De la prescripción

Artículo 96. Las infracciones reprimidas con multas, prescribirán a los dos (2) años.

Artículo 97. La prescripción se interrumpirá por la comisión de una nueva infracción o por la secuela del procedimiento administrativo o judicial.

Título VII
Competencia

Artículo 98. Serán competentes para entender en lo dispuesto en los Títulos V y VI los Juzgados Nacionales de Primera Instancia en lo Contencioso Administrativo Federal o los Juzgados Federales del interior del país, hasta tanto se cree un fuero específico en materia migratoria.

Título VIII
De las tasas

Tasa retributiva de servicios

Artículo 99. El Poder Ejecutivo Nacional determinará los actos de la Dirección Nacional de Migraciones que serán gravados con tasas retributivas de servicios, estableciendo los montos, requisitos y modos de su percepción.

Artículo 100. Los servicios de inspección o de contralor migratorio que la Dirección Nacional de Migraciones preste en horas o días inhábiles o fuera de sus sedes, a los medios de transporte internacional que lleguen o que salgan de la República, se encontrarán gravados por las tasas que fije el Poder Ejecutivo al efecto.

Artículo 101. Los fondos provenientes de las tasas percibidas de acuerdo con la presente ley, serán depositados en el lugar y la forma establecidos por la reglamentación.

Título IX
De los argentinos en el exterior

Artículo 102. El Gobierno de la República Argentina podrá suscribir convenios con los Estados en los que residan emigrantes argentinos para asegurarles la igualdad o asimilación de los derechos laborales y de seguridad social que rijan en el país receptor. Dichos tratados deberán asimismo garantizar a los emigrantes la posibilidad de efectuar remesas de fondos para el sostenimiento de sus familiares en la República Argentina.

El Poder Ejecutivo podrá suspender los beneficios otorgados por la presente ley respecto de los súbditos de aquellos países que tengan establecidas restricciones para los ciudadanos argentinos allí residentes, que afecten gravemente el principio de reciprocidad.

Artículo 103. Todo argentino con más de dos (2) años de residencia en el exterior que decida retornar al país podrá introducir los bienes de su pertenencia destinados a su actividad laboral libre de derechos de importación, tasas, contribuciones y demás gravámenes, así como su automóvil, efectos personales y del hogar hasta el monto que determine la autoridad competente, hasta el monto y con los alcances que establezca el Poder Ejecutivo Nacional.

Artículo 104. Las embajadas y consulados de la República Argentina deberán contar con los servicios necesarios para mantener informados a los argentinos en el exterior de las franquicias y demás exenciones para retornar al país.

Título X
De la autoridad de aplicación

Capítulo I
Autoridad de aplicación

Artículo 105. La autoridad de aplicación de la presente ley será la Dirección Nacional de Migraciones.

Artículo 106. Los poderes públicos impulsarán el fortalecimiento del movimiento asociativo entre los inmigrantes y apoyarán a los sindicatos, organizaciones empresariales y a las organizaciones no gubernamentales que, sin ánimo de lucro, favorezcan su integración social, prestándoles ayuda en la medida de sus posibilidades.

Capítulo II
De la Dirección Nacional de Migraciones

Artículo 107. La Dirección Nacional de Migraciones, será el órgano de aplicación de la presente ley, con competencia para entender en la admisión, otorgamiento de residencias y su extensión, en el Territorio Nacional y en el exterior, pudiendo a esos efectos establecer nuevas delegaciones, con el objeto de conceder permisos de ingresos, prórrogas de permanencia y cambios de calificación para extranjeros. Asimismo controlará el ingreso y egreso de personas al país y ejercerá el control de permanencia y el poder de policía de extranjeros en todo el Territorio de la República.

Artículo 108. La Dirección Nacional de Migraciones podrá delegar el ejercicio de sus funciones y facultades de la Dirección Nacional de Migraciones en las instituciones que constituyan la Policía Migratoria Auxiliar o en otras autoridades, nacionales, provinciales o municipales, las que actuarán conforme a las normas y directivas que aquélla les imparta.

Capítulo III
De la relación entre Dirección Nacional de Migraciones con otros entes y organismos

Artículo109. Los Gobernadores de Provincias y el Jefe de Gobierno de la Ciudad de Buenos Aires, en su carácter de agentes naturales del Gobierno Federal, proveerán lo necesario para asegurar el cumplimiento de la presente ley en sus respectivas jurisdicciones, y designarán los organismos que colaborarán para tales fines con la Dirección Nacional de Migraciones.

Artículo 110. Los juzgados federales deberán comunicar a la Dirección Nacional de Migraciones sobre las cartas de ciudadanía otorgadas y su cancelación en un plazo no mayor de treinta (30) días, para que ésta actualice sus registros.

Artículo 111. Las autoridades competentes que extiendan certificado de defunción de extranjeros deberán comunicarlo a la Dirección Nacional de Migraciones en un plazo no mayor de quince (15) días, para que ésta actualice sus registros.

Capítulo IV
De los registros migratorios

Artículo 112. La Dirección Nacional de Migraciones creará aquellos registros que resulten necesarios para el cumplimiento de la presente ley.

Capítulo V
De la Policía Migratoria Auxiliar

Artículo 113. El Ministerio del Interior podrá convenir con los gobernadores de provincias y el Jefe de Gobierno de la Ciudad Autónoma de Buenos Aires el ejercicio de funciones de Policía Migratoria Auxiliar en sus respectivas jurisdicciones y las autoridades u organismos provinciales que la cumplirán.

Artículo 114. La Policía Migratoria Auxiliar quedará integrada por la Prefectura Naval Argentina, la Gendarmería Nacional, la Policía Aeronáutica Nacional y la Policía Federal, las que en tales funciones quedarán obligadas a prestar a la Dirección Nacional de Migraciones la colaboración que les requiera.

Artículo 115. La Dirección Nacional de Migraciones, mediante la imputación de un porcentaje del producido de las tasas o multas que resulten de la aplicación de la presente, podrá solventar los gastos en que incurrieran la Policía Migratoria Auxiliar, las autoridades delegadas o aquellas otras con las que hubiera celebrado convenios, en cumplimiento de las funciones acordadas.

Capítulo VI
Delitos al orden migratorio

Artículo 116. Será reprimido con prisión o reclusión de uno (1) a seis (6) años el que realizare, promoviere o facilitare el tráfico ilegal de personas desde, en tránsito o con destino a la República Argentina.

Se entenderá por tráfico ilegal de personas, la acción de realizar, promover o facilitar el cruce ilegal de personas, por los límites fronterizos nacionales con el fin de obtener directa o indirectamente un beneficio.

Artículo 117. Será reprimido con prisión o reclusión de uno (1) a seis (6) años el que promoviere o facilitare la permanencia ilegal de extranjeros en el Territorio de la República Argentina con el fin de obtener directa o indirectamente un beneficio.

Artículo 118. Igual pena se impondrá a quien mediante la presentación de documentación material o ideológicamente falsa peticione para un tercero algún tipo de beneficio migratorio.

Artículo 119. Será reprimido con prisión o reclusión de dos (2) a ocho (8) años el que realice las conductas descritas en el artículo anterior empleando la violencia, intimidación o engaño o abusando de una necesidad o inexperiencia de la víctima.

Artículo120. Las penas descritas en el presente capítulo se agravarán de tres (3) a diez (10) años cuando se verifiquen algunas de las siguientes circunstancias:

a) Si se hiciere de ello una actividad habitual;

b) Interviniere en el hecho un funcionario o empleado público en ejercicio o en ocasión de sus funciones o con abuso de su cargo. En este caso se impondrá también inhabilitación absoluta perpetua para ejercer cargos públicos.

Artículo 121. Las penas establecidas en el artículo anterior se agravarán de cinco (5) a quince (15) años cuando se hubiere puesto en peligro la vida, la salud o la integridad de los migrantes o cuando la víctima sea menor de edad; y de ocho (8) a veinte (20) años cuando el tráfico de personas se hubiere efectuado con el objeto de cometer actos de terrorismo, actividades de narcotráfico, lavado de dinero o prostitución.

Título XI
Disposiciones complementarias y transitorias

Artículo 122. La presente ley entrará en vigencia a partir de su publicación. Producida la entrada en vigor de la presente ley, sus normas serán aplicables aun a los casos que se encontraren pendientes de una decisión firme a esa fecha.

Artículo 123. La elaboración de la reglamentación de la presente ley estará a cargo de la autoridad de aplicación.

Artículo 124. Derógase la Ley Nº 22439, su Decreto reglamentario Nº 1023/94 y toda otra norma contraria a la presente ley, que no obstante retendrán su validez y vigencia hasta tanto se produzca la entrada en vigor de esta última y su reglamentación.

Artículo 125. Ninguna de las disposiciones de la presente ley tendrá por efecto eximir a los extranjeros de la obligación de cumplir con la legislación nacional ni de la obligación de respetar la identidad cultural de los argentinos.

Artículo 126. Comuníquese al Poder Ejecutivo.

Dada en la Sala de Sesiones del Congreso Argentino, en Buenos Aires, a los diecisiete días del mes de diciembre del año dos mil tres.

—Registrada bajo el N° 25.871—

Eduardo O. Camaño – Daniel O. Scioli – Eduardo D. Rollano – Juan Estrada.