



COUNTRY REPORT

IMMIGRATION DETENTION IN

ARGENTINA: A PARADIGM SHIFT?

APRIL 2020



GLOBALDETENTIONPROJECT

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THE GLOBAL DETENTION PROJECT MISSION

The Global Detention Project (GDP) is a non-profit organisation based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:

- To promote the human rights of detained migrants, refugees, and asylum seekers;
- To ensure transparency in the treatment of immigration detainees;
- To reinforce advocacy aimed at reforming detention systems;
- To nurture policy-relevant scholarship on the causes and consequences of migration control policies.

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Front cover image: A long-distance bus carrying 60 foreigners is stopped in Buenos Aires for violating Covid-19 restrictions © La Nacion

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GLOSSARY

DNU	Decree of Necessity and Urgency
GDP	Global Detention Project
NDM	National Direction of Migration
NML	National Migration Law
NPM	National Preventive Mechanism
OPCAT	Optional Protocol to the UN Convention against Torture
RNML	Regulation of the National Migration Law
SPT	Subcommittee on the Prevention of Torture



KEY FINDINGS

- New legislation enables indefinite immigration detention when an individual challenges a detention decision via administrative or judicial action.
- Despite Argentina's widely criticised decision to open the country's first immigration detention centre in 2016, the new centre was never used and no other specialised centres have been opened.
- Detention measures for immigration-related reasons are rarely applied, reflecting a trend common to most countries in South America, where detention and deportation have historically not been given major importance.
- Argentina employs "retention" as a euphemism to denote detention in its immigration law.
- Immigration law does not specifically mention a requirement to assess "alternatives to detention" or non-custodial measures before issuing a detention order.
- In July 2019 there were 2,663 foreign nationals in federal prisons in Argentina, which amounts to 19% of the total federal prison population.
- Argentina's National Direction of Migration does not publish data relating to the number of persons it detains or expels.
- In March 2020, the Covid-19 crisis spurred the government to place the country under lockdown and close its borders.
- Reports indicate that some local authorities have used the pandemic as an excuse to force migrants out of their provinces and to step up apprehensions in border areas.



1. INTRODUCTION¹

Argentina has historically been an important migrant destination country in South America. Although the majority of immigrants come from neighbouring countries—Chile, Bolivia, Paraguay, Peru, and Uruguay²—there has been an increase in the numbers of people arriving from as far away as China. Indeed, Chinese arrivals increased from 5,850 in 1995 to 14,397 in 2015.³ Migrants from European countries, mainly Italy and Spain, also account for a small but important percentage of the country's immigrant population.⁴

Argentina's National Migration Law (NML) (*Ley de Migraciones* N 25.871) was adopted in 2003 and came into force in January 2004. This law and its accompanying Regulatory Decree (N 616/2010) form part of Argentina's migration legal framework. The legislation includes provisions against discrimination based on nationality,⁵ stipulates the right to migrate,⁶ and recognises the right to education and medical assistance to people without discrimination and regardless of their immigration status.⁷

Argentina has traditionally addressed undocumented migration through regularisation rather than securitisation.⁸ These policies have been lauded in international fora, including the UN Universal Periodic Review.⁹ The 2006 "Patria Grande" (*Programa Nacional de Normalización Documentaria Migratoria*) initiative, which aimed to regularise undocumented migrants and refugees from other MERCOSUR countries, has been particularly touted as an example of good practice.¹⁰

¹ The Global Detention Project would like to thank Paula Carello from Fundación Migra for her comments on an early version of this report. Any errors are those of the GDP.

² Organisation for Economic Cooperation and Development/ International Labour Organisation, "How Immigrants Contribute to Argentina's Economy," *OECD Publishing*, 2018, <https://bit.ly/3cTcW4C>

³ United Nations, Department of Economic and Social Affairs, Population Division, 2015.

⁴ Organisation for Economic Cooperation and Development/ International Labour Organisation, "How Immigrants Contribute to Argentina's Economy," *OECD Publishing*, 2018, <https://bit.ly/3f95TH4>

⁵ Article 13 of the NML

⁶ Article 4 of the NML.

⁷ Articles 6 and 7 of the NML.

⁸ Centro de Estudios Legales y Sociales (CELS) and Comisión Argentina para Refugiados y Migrantes (CAREF), "Comentarios y Aportes a la versión revisada de fecha 23 de Julio del borrador de Declaración a ser adoptada en la Reunión de Alto Nivel para hacer frente a los grandes movimientos de refugiados y migrantes que tendrá lugar el 19 de Septiembre de 2016," 23 July 2016, <https://bit.ly/2VJ1T8f>

⁹ Human Rights Council, "Report of the Working Group on the Universal Periodic Review, Argentina, A/HRC/22/4," 12 December 2012, <https://bit.ly/3aMs4iS>

¹⁰ Human Rights Council, "Report of the Working Group on the Universal Periodic Review, Argentina, A/HRC/22/4," 12 December 2012, <https://bit.ly/3aNUWqO>

In 2016, shortly after elections that ushered in a conservative government, the country initiated an important shift in its stance towards migration, announcing the opening of Argentina's first immigration detention facility.¹¹ The government stated that the facility would not be a prison "but rather a 'retention' facility to deprive people of their liberty as they await deportation [and] that this was for the detainees' own good, separating them from criminal prisoners and giving them better protection."¹²

Despite the widely criticised move, the "retention" facility was never opened. Even before the government had announced its intention to open the facility, the National Penitentiary Office had reported that detention measures for immigration-related reasons were only very rarely applied, raising questions about why the facility was conceived in the first place.¹³

The government followed up with a series of controversial reforms, including most notably a 2017 decree (*Decreto de Necesidad y Urgencia* 70/2017 – Decree of Necessity and Urgency (DNU)) modifying the country's migration law. Representing a sharp departure from Argentina's traditional emphasis on integrating migrants, the decree restricted the rights of migrants by, *inter alia*, introducing impediments to entry into the country as well as accelerating expulsion proceedings. For instance, Article 4 of the DNU, amending Articles 29 and 69 of the NML, establishing that the "omission to declare the existence of criminal records or sentences" may result in denying admission or stay or cancelling residency.¹⁴ Observers, including the Committee on Migrant Workers, have expressed concerns regarding the decree, in particular regarding expedited expulsions.¹⁵ As of late 2019, the constitutionality of the decree was being challenged in Argentina's Supreme Court,¹⁶ largely on the basis that the reasons cited by the government in enacting the decree via special summary procedure, did not satisfy the "necessity and urgency" requirements provided by Article 99(3) of the Argentinean Constitution.¹⁷

In December 2019, a new government took office and the new President, Alberto Fernández, questioned the DNU enacted by his predecessor. In particular, he stated that the DNU "authorises expulsions without convictions and that this is very dangerous as it can become an act of persecution against a population." However, at that stage Fernández had

¹¹ International Detention Coalition, "Argentina Proposes Creation of Immigration Detention Centre," 3 September 2016, <https://idcoalition.org/news/argentina-proposes-creation-of-immigration-detention-center/>

¹² Global Detention Project, "Submission to the Universal Periodic Review: Argentina," May 2017, <https://www.globaldetentionproject.org/submission-to-the-universal-periodic-review-upr-argentina-2>

¹³ The report stated that between 2013 and 2015, there were 157 immigration detention orders, of which, only 62 were executed. See: Procuración Penitenciaria de la Nación, "La situación de los derechos humanos en las cárceles federales de la Argentina, Informe Anual 2014," ppn.gov.ar/sites/default/files/INFORME%20ANUAL%20PPN%202014_0.pdf

¹⁴ L. García, "Argentina's Migration Law: Changes Challenging the Human Right to Migrate," *Border Criminologies*, 11 September 2017, <https://bit.ly/2PsTwcR>

¹⁵ Committee on the Rights of Migrant Workers, "Committee on Migrant Workers Raise Concerns About Expedited Expulsions in Dialogue with Argentina," *OHCHR*, 3 September 2019, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24943&LangID=E>

¹⁶ Procuración Penitenciaria de la Nación, "La situación de los derechos humanos en las cárceles federales de la Argentina, Informe Anual 2017," <https://www.ppn.gov.ar/pdf/publicaciones/Informe-anual-2017.pdf>

¹⁷ Procuración Penitenciaria de la Nación, "La Cámara Contencioso Administrativo Federal hace lugar al amparo colectivo y declara la inconstitucionalidad del DNU N°70/2017 que regula materia migratoria," 27 March 2018, <https://bit.ly/2qr9IYJ>

not yet discussed the issue with the Ministry of Security (although planned on doing so shortly).¹⁸

With the onset of the Covid-19 crisis in early 2020, Argentina closed its borders to both nationals and non-nationals. There have been some reports that authorities in parts of the country began exceptional measures to force migrants out of their provinces and to step up apprehensions of people in border areas.¹⁹

¹⁸ Infobae, “*Alberto Fernández cuestionó el decreto de Macri para expulsar a extranjeros que delinquen: No se debe castigar solo por la presunción*,” 24 January 2020, <https://bit.ly/2VO9qD7>

¹⁹ Participant Comments, “Listening Session of UN Network on Migration about Impact of Covid-19,” Reported by Katie Welsford (Global Detention Project), 1 April 2020.



2. LAWS, POLICIES, PRACTICES

2.1 Key norms. Argentina's legal norms relating to immigration detention are contained in several pieces of legislation: the National Migration Law (NML); National Decree N 616/2010, approving the Regulation of the National Migration Law (RNML) ("*Decreto Nacional 616/2010, Decreto Reglamentario de la Ley 25.871 sobre política migratoria Argentina*"); Habeas corpus procedure law, ("*Ley N 23.098, Procedimiento de Habeas Corpus*"); the Penal Code, Law 11.179 ("*Código Penal de la Nación Argentina, Ley 11.179*"); and the 2017 Decree of Necessity and Urgency (*Decreto de Necesidad y Urgencia 70/2017 - DNU*), amending certain provisions of the NML.

Experts contend that Argentinian law provides a comparatively far-reaching definition of detention as it includes "all types of procedures in which a person's freedom of movement is restricted."²⁰ Article 43 of the [Argentinean Constitution](#) (*Constitución de 1994*) provides that the habeas corpus procedure is applicable when, *inter alia*, the right to physical freedom is affected, restricted, altered, or threatened ("*Cuando el derecho lesionado, restringido, alterado o amenazado fuera la libertad física (...) la acción de habeas corpus podrá ser interpuesta*").

On the other hand, the use of the euphemism "retention" to denote immigration detention in Argentinian law may reflect a lack of clarity about the impact and legal significance of administrative immigration detention, which could jeopardise people's ability to access critical rights and protections. The term was first coined in [France](#) to denote that country's immigration detention measures, which have been the subject of considerable criticism.²¹

2.2 Grounds for detention. Under the NML and the RNML, as amended by the DNU, there are three grounds for imposing detention measures: (1) individuals may be ordered to "remain in facilities at the entry point" when "there are reasonable grounds to suspect that the person's intention to enter the territory differs from that manifested at the time of obtaining the visa or presenting before immigration control" (i.e. illegal entry) ("*Cuando existiera la 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 ... deberá permanecer en las instalaciones del punto de ingreso*") (Article 35); and detention can also be used as an exceptional measure (2) to enforce an order of expulsion or (3) to prevent absconding during adjudication procedures in cases where an expulsion order is not firm (i.e. expulsion orders with outstanding appeals) (Article 70).

²⁰ Oxford Pro Bono Publico, "Remedies and Procedures on the Right of Anyone Deprived of his or her Liberty by Arrest or Detention to Bring Proceedings Before a Court: A Comparative and Analytical Review of State Practice," *Oxford University Faculty of Law*, April 2014, <http://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2014/05/2014.6-Arbitrary-Detention-Project.pdf>.

²¹ C. Richard and N. Fischer, "A Legal Disgrace? The Retention of Deported Migrants in Contemporary France," *Social Science Information*, 47(4), 2010; M. Grange, "Smoke Screens: Is There a Correlation between Migration Euphemisms and the Language of Detention," *Global Detention Project Working Paper No. 5*, 2013, <https://bit.ly/2KD3d6m>

The RNML (Article 70) clarifies that in the latter case, the detention request must contain a “precise description of the factors giving rise to the situation, provide documentary evidence corroborating these, and indicate the duration required.”²² The law further stipulates that where the “retention” request is accepted, the migration authority must present a report to the intervening judicial body every 10 days detailing the progress of the administrative procedure as well as the reasons that justify maintaining the retention measure. In addition, to determine whether there is a risk that the person will not comply with the expulsion order, the following factors will be considered:

- Integration; determined by a person’s domicile, habitual residence, location of their family and business or work.
- The circumstances and nature of the fact for which the foreigner’s expulsion is being ordered.
- The foreigner’s behaviour during the administrative proceedings preceding the expulsion order, to the extent that it indicates their willingness to accept the final decision, and in particular, if they have hidden information about their identity or residence or have presented false information.

Grounds for expulsion may be divided into the following groups: (1) failure to regularise one’s immigration status within a given set of time (NML, Article 61); (2) cancelation of a residence permit for reasons listed under Article 62 of the NML, as amended by Article 6 of the DNU; and (3) expulsion of foreigners serving prison sentences (“*extranjeros que se encontraren cumpliendo penas privativas de libertad*”) (NML, Article 64).

The 2014 Criminal Procedure Code (“*Código Procesal Federal, aprobado por la Ley N 27.063*”), which came into force in 2017, introduces an additional circumstance that may lead to expulsion. Article 35 provides for situations where there would be a suspension of prosecution (“*suspensión del proceso a prueba*”). It is applicable to foreigners caught committing a crime (“*flagrancia de un delito*”) and provides for their expulsion in such a situation.

2.3 Asylum seekers. Law 26.165 on the Recognition and Protection of Asylum Seekers (“*Ley 26.165, Ley General de Reconocimiento y Protección al Refugiado*”) regulates the asylum process in Argentina and provides rights for refugees and asylum seekers. While legal principles such as non-refoulement and family unity are explicitly recognised in the text, detention is not mentioned.²³ Argentina has also ratified the 1951 UN Convention Relating to the Status of Refugees in 1961 and its accompanying protocol in 1967.²⁴ Although Argentina is not a signatory to the [Cartagena Declaration on Refugees](#), Law 26.165 is in line with international standards of protection, including the extended refugee definition in the this Declaration.

²² RNML, Article 70: “*En tal caso la solicitud de retención que se remita a la autoridad judicial deberá efectuar una descripción precisa de las pautas que acrediten tal situación, acompañar los elementos documentales, si los hubiere, que las corroboren, e indicar el plazo de duración requerido.*”

²³ InfoLeg, “*Ley 26.165, Ley General de Reconocimiento y Protección al Refugiado,*” 28 November 2006, <https://bit.ly/2KI2qkA>

²⁴ UN High Commissioner for Refugees (UNHCR), “States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol,” <https://www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf>

In September 2016, at the [Leader's Summit on Refugees](#), then-President Mauricio Macri announced that Argentina would receive 3,000 Syrians through the “*Programa Siria*,”²⁵ which was put in place through “*Disposición 1025/2019*.”²⁶ This programme grants humanitarian visas to those affected by conflict in Syria if there is a sponsor in Argentina willing to help meet their living expenses for the first year.²⁷

2.4 Children. Argentina has advised the Committee on Migrant Workers that the NDM does not hold any records indicating that they have ever detained minors for immigration-related reasons. They have also indicated that they do not have instructions to detain minors, given that Argentina’s national policy does not require them to be detained.²⁸

2.5 Length of detention. Although Argentinian law establishes time limits for holding people in immigration-related detention, there have been cases of immigration detention in which periods of detention for deportation exceeded these limits.

Article 70 of the NML, as amended by Article 21 DNU, states that in all cases, the duration of administrative detention should not exceed that which is strictly necessary to carry out expulsion (“*En todos los casos el tiempo de retención no podrá exceder el estrictamente indispensable para hacer efectiva la expulsión del extranjero*”).

The RNML of 2010 clarified that in expulsion cases, the National Direction of Migration (“*Dirección Nacional de Migraciones*”) (NDM) could request detention for an initial period of 15 days, which could be extended for a further 30 days. In these circumstances, the NDM had to report, every 10 days, the measures undertaken to enforce expulsion and the reasons justifying the detention.²⁹ As a consequence, the maximum duration of immigration detention under this law was 45 days.

Despite this provision, there have been instances in which people were been detained beyond this time limit, including a case from 2016 when four Chinese nationals were detained for nearly four months while awaiting their expulsion.³⁰ Between 2014 and 2015, a South African national was detained for six months at the Unidad 31 Prison (“*Centro de Detención de Mujeres*”) prior to her deportation. The NDM only agreed to pay for her flight from Argentina to Brazil and asked her to pay for her ticket from Brazil to South Africa. The

²⁵ UN High Commissioner for Refugees (UNHCR), “Argentina Fact Sheet,” August 2018, <https://www.acnur.org/5b991fc4.pdf>

²⁶ Argentina.gob, “*Disposición 1025/2019, DI-2019-1025-APN-DNM#MI*,” 27 February 2019, <https://bit.ly/2YfE09Z>; For more information see: UN High Commissioner for Refugees (UNHCR), “*ACNUR Celebra los Avances del Nuevo Marco Normativo del Programa Siria*,” 20 March 2019, <https://bit.ly/3cZOT3R>

²⁷ F. Bernas, “Syrian Refugees Reap Benefits of Argentina’s New Visa Rules,” UNHCR, 10 November 2017, <https://www.unhcr.org/uk/news/stories/2017/11/5a0586774/syrian-refugees-reap-benefits-argentinas-new-visa-rules.html>

²⁸ Office of the High Commissioner for Human Rights (OHCHR), “Argentina’s Response to the UN Committee on Migrant Workers General Comment No. 5 on Migrants’ Human Right to Liberty and their Protection from Arbitrary Detention questionnaire,” December 2018, <https://www.ohchr.org/EN/HRBodies/CMW/Pages/GC5.aspx>

²⁹ Procuración Penitenciaria de la Nación, “*La situación de los derechos humanos en las cárceles federales de la Argentina, Informe Anual 2017*,” <https://www.ppn.gov.ar/pdf/publicaciones/Informe-anual-2017.pdf>

³⁰ Procuración Penitenciaria de la Nación, “La Cámara Federal de Casación fallo a favor de ciudadanos extranjeros detenidos por solicitud de la Dirección Nacional de Migraciones,” 12 September 2016, <https://bit.ly/2qZyOZD>

National Penitentiary Office submitted a writ of habeas corpus, which subsequently led the NDM to pay for a ticket for the individual.³¹

The 2017 decree, the DNU, alters these provisions in key ways. Article 21, amending Article 70 of the NML, extends the duration of detention for individuals whose expulsion orders are firm (i.e. expulsion orders with no remaining appeals). It provides for an initial detention period of 30 days, which can be extended for a further 30 days via judicial authorisation. In effect, this extends the maximum duration to 60 days, without the need to specify the reasons for making such detention necessary.³²

In cases of detention without a firm expulsion order, the DNU provides that the duration of detention will be that which is strictly necessary to affect the expulsion. However, where an individual challenges an immigration detention decision via administrative or judicial action, duration of detention will be extended until the action is resolved (*“Las acciones o procesos recursivos suspenderán el cómputo del plazo de retención hasta su resolución definitiva”*). In other words, the length of detention may theoretically be extended indefinitely until the resolution of the administrative or judicial actions.

Article 21 of the DNU, amending Article 70 of the NML, provides for the application of detention measures from the beginning of an immigration procedure, before deportation has been ordered. The provision mentions that such detention should only be requested when the characteristics of the case justify the measure (*“Excepcionalmente cuando las características del caso lo justifiquen, la Dirección Nacional de Migraciones podrá solicitar a la autoridad judicial la retención preventiva del extranjero aun cuando la orden de expulsión no se encuentre firme”*). However, the DNU does not specify which characteristics are to be established in justifying the measure.

2.6 Procedural standards. The Argentinean Constitution (*Constitución de 1994*) provides basic guarantees for all inhabitants of the country, including protection against arbitrary detention and the right to judicial remedies, among other guarantees (Articles 14, 18, 43). Article 20 explicitly states that foreigners enjoy the same rights as citizens.

According to Article 70 of the NML as amended by Article 21 of the DNU, the judiciary must intervene when ordering detention. Detention must be requested by the NDM and has to be authorised by the competent Court.

Article 86 of the NML, as amended by Article 24 of the DNU, grants foreigners the right to free legal assistance in administrative and judicial procedures that may lead to a refusal of entry, an order of expulsion, and return to their country of origin. The provision also grants foreigners access to interpretation services if they do not understand or speak the official language. The Public Ministry of Defense (*“Ministerio Público de la Defensa”*) includes a specialised legal service in immigration matters, which provides free legal assistance.³³

³¹ Procuración Penitenciaria de la Nación, “La acción de habeas corpus presentada por la PPN logro que se efectivice la expulsión de una ciudadana sudafricana que sufría una demora de 6 meses,” February 2015, <https://bit.ly/35mkb1p>

³² Procuración Penitenciaria de la Nación, “La situación de los derechos humanos en las cárceles federales de la Argentina, Informe Anual 2017,” <https://www.ppn.gov.ar/pdf/publicaciones/Informe-anual-2017.pdf>

³³ Office of the High Commissioner for Human Rights (OHCHR), “Argentina’s Response to the UN Committee on Migrant Workers General Comment No. 5 on Migrants’ Human Right to Liberty and their Protection from Arbitrary Detention questionnaire,” December 2018, <https://www.ohchr.org/EN/HRBodies/CMW/Pages/GC5.aspx>

The DNU, however, introduced some limitations to procedural standards. Article 24 provides that an expulsion process may continue without the provision of legal aid in cases where a person does not request the provision of legal assistance or fails to demonstrate a lack of economic resources. It also narrows the scope of free legal aid by limiting it to procedures that may lead to expulsion or that may lead to the denial of legal residence.³⁴

In addition, the DNU (Articles 14 and 16 modifying Article 69 of the NML) has reduced the time frames in which a foreigner may challenge an expulsion order and court ruling. While previous regulations provided 15 and 30-day deadlines, individuals now have just three days to present their appeal. Such a reduction has drastically increased the pressure placed on persons in deportation proceedings to organise an effective defence.³⁵

According to Article 13 of the DNU, modifying Article 69 of the NML, a detainee has the right to view their case file (*“el interesado tiene derecho a tomar vista del expediente”*) within three days. Requests to view case files suspend the timeframe to challenge an expulsion order and a court ruling.

The Migrant Commission (*“Comisión del Migrante”*), which functions under the Public Ministry of Defense and whose role is to defend and protect the rights of foreign nationals³⁶ by, *inter alia*, offering free juridical assistance and information, intervenes on behalf of foreign nationals in administrative expulsion proceedings.³⁷

2.7 Non-custodial measures (“alternatives to detention”). Argentinean law does not specifically mention a requirement to assess “alternatives to detention” or non-custodial measures before issuing a detention order. However, Article 71 of the NML provides for bail in situations where the removal of the foreign national cannot be executed within a reasonable period of time or where there are reasons justifying the measure (*“la autoridad de aplicación podrá disponer de su libertad provisoria bajo caución ... cuando no pueda realizarse la expulsión en un plazo prudencial o median causas que lo justifiquen”*). In addition, such a measure must be communicated to the competent Federal Judge. As clarified by the RNML, the foreigner must appear before the immigration authority when required as failing to do so could lead to the revocation of bail (*“el extranjero deberá comparecer ante la autoridad migratoria cuando así le sea requerido, bajo apercibimiento de revocarse la libertad provisional otorgada”*).

Further, under Article 70 of the RNML, the Interior Ministry or the NDM may refrain from requesting the detention of foreign nationals if they demonstrate that they will abide by an expulsion order and leave the country within 72 hours, and provided that there are no indications that they will not comply with the order (*“podrán abstenerse de solicitar la retención ... cuando el interesado acredite debidamente que cumplirá con la orden de expulsión en un plazo no superior a setenta y dos (72) horas de haber quedado firme la*

³⁴ Global Detention Project, “Submission to the Universal Periodic Review: Argentina,” May 2017, <https://www.globaldetentionproject.org/submission-to-the-universal-periodic-review-upr-argentina-2>

³⁵ Global Detention Project, “Submission to the Universal Periodic Review: Argentina,” May 2017, <https://www.globaldetentionproject.org/submission-to-the-universal-periodic-review-upr-argentina-2>

³⁶ Ministerio Publico de la Defensa, “Resolución N 1858/08 de la Defensoría General de la Nación,” <https://bit.ly/35dC2sa>

³⁷ Ministerio Publico de la Defensa, “Comisión del Migrante,” <https://www.mpd.gov.ar/index.php/programas-y-comisiones-n/56-comision-del-migrante>

medida y no existan circunstancias objetivas que hagan presumir que eludirá la orden"). The same factors as those listed above in terms of determining the risk of absconson are also applicable in this regard (see 2.2 Grounds for detention).

2.8 Detaining authorities. Argentina does not have a specialised immigration police force. Article 72 of the NML states that "retention" is to be executed by the "Auxiliary Migration Police," which include a range of security forces. According to Article 114 of the NML, the Auxiliary Migration Police will be comprised of: the Naval Prefecture ("*Prefectura Naval Argentina*"), the National Gendarmerie ("*Gendarmería Nacional Argentina*"), the National Aeronautical Police ("*Policía Aeronáutica Nacional*") and the Federal Police ("*Policía Federal*").

2.9 Regulation of detention conditions and regimes. The RNML (Article 72) provides that the accommodation of detained foreigners must be conducted in "adequate spaces, separated from penal prisoners, and in particular taking into account their family situation" ("*El alojamiento de los extranjeros retenidos deberá hacerse en ámbitos adecuados, separados de los detenidos por causas penales, teniéndose particularmente en cuenta su situación familiar*"). In exceptional cases, the NDM may accommodate immigration detainees in "private spaces" under the custody of security forces empowered to enforce migration measures.

Article 72 further stipulates that the NDM will request the intervention of the competent health authority so that the retention of foreigners suffering from psychophysical impairments or requiring specialised or continuous medical care is appropriate.

2.10 Domestic monitoring. Although immigration detention is not a common practice in Argentina, official and non-governmental entities that attempt to monitor relevant practices. In November 2004, Argentina ratified the [Optional Protocol to the Convention against Torture \(OPCAT\)](#) and in November 2012, it designated the National Penitentiary Office (Ombudsman Institution) as National Preventive Mechanism (NPM) through Law 26.827 ("*Ley 26.827, Mecanismo Nacional de Prevención de la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes*"). The National Penitentiary Office, through its annual reports, reviews the human rights situation of persons deprived of liberty in Argentinean prisons. The reports mention "foreigners in prison," review newly passed legislation in the area, and provide details on detention centres.

The System of Coordination and Monitoring of Judicial Control of Prison Units ("*Sistema de Coordinación y Seguimiento de Control Judicial de Unidades Carcelarias*")—which is made up of federal and national judges; the Attorney General's Office represented by the Office of Institution Violence ("*Procuraduría de Violencia Institucional*"); the Public Ministry of Defence ("*La Defensoría General de la Nación*"); the National Penitentiary Office; and as consultative members: the Public Bar Association ("*El Colegio Público de Abogados de Capital Federal*"); the Centre for Legal and Social Studies ("*El Centro de Estudios Legales y Sociales*") (CELS); the Criminal Thought Association ("*la Asociación Pensamiento Penal*") and the Commission for the Memory of the Province of Buenos Aires ("*la Comisión por la Memoria de la Provincia de Buenos Aires*")—also conducts prison inspections and publishes reports on its website.³⁸

³⁸ Sistema de Coordinación y Seguimiento de Control Judicial de Unidades Carcelarias, "*Inspecciones*," http://sistemacontrolcarceles.gob.ar/inspecciones_/

2.11 International monitoring. Having ratified the OPCAT, Argentina receives visits from the UN Subcommittee on the Prevention of Torture (SPT). In April 2012, the SPT visited Argentina and noted that “torture and ill-treatment constitute a situation of structural violence in places of incarceration and are practices that are deeply rooted in the behaviour of prison staff in Argentina.”³⁹ The SPT noted the existence of registers of torture at the federal and provincial levels as a positive development, and recommended that Argentina take a series of measures to prevent torture. In March 2019, the subcommittee announced that it would visit Argentina during the year.⁴⁰ However, on 10 March 2020, one day after the start of the visit, the SPT delegation suspended its visit to Argentina in view of the Covid-19 crisis. The head of the delegation stated that the SPT would resume its visit to Argentina as soon as conditions would allow, especially given their concerns regarding “the challenges the country faces with regard to the prevention of torture, ill-treatment and conditions of detention.”⁴¹

Argentina has also been subject to comments by the Committee against Torture in relation to the DNU. In particular, the committee has expressed concern that the decree makes it difficult for persons subject to expulsion to demonstrate eligibility for free legal aid as they must show beyond reasonable doubt that they lack economic resources.⁴²

Since 1968, Argentina has also been a party to the International Convention on the Elimination of All Forms of Racial Discrimination. In 2017, the Committee on the Elimination of Racial Discrimination (CERD) expressed concern regarding Argentina’s intention to “set up a detention centre for migrants awaiting deportation because it could lead to detention not being used as a last resort.”⁴³

2.12 Trends and statistics. The NDM does not publish data relating to the number of persons it detains or expels. Nonetheless, the GDP was informed by the National Penitentiary Office that given this absence of information, a database (“*Detenciones Migratorias*”) was created in 2018 to record immigration detention data. The information recorded on the database concerns the period of August 2017 up to October 2018— although the National Penitentiary Office has advised that the information recorded does not represent the total number of immigration detainees but rather an approximation. From August 2017 to October 2018, there were 99 individuals apprehended by migration authorities. Of these however, 56 percent involved detention whereas in the other cases, individuals were apprehended and expelled from the country. 38 percent of apprehended individuals were of Chinese origin; 30 percent of Latin-American origin, and 28 percent were of Senegalese origin. Reportedly, of these cases only one individual was released as a

³⁹ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, “Report of the Visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/OP/ARG/1,” 27 November 2013, <https://bit.ly/35azACY>

⁴⁰ Office of the High Commissioner for Human Rights (OHCHR), “UN Torture Prevention Body to Visit Argentina, the State of Palestine, and Sri Lanka in 2019,” 8 March 2019, www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24286&LangID=E

⁴¹ Office of the High Commissioner for Human Rights (OHCHR), “UN Torture Prevention Body Suspends Argentina Visit over Covid-19 Concerns. Postpones Scheduled Visits to Bulgaria, Australia and Nauru,” 11 March 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25710&LangID=E>

⁴² UN Committee against Torture (CAT), “Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Argentina, CAT/C/ARG/CO/5-6,” 24 May 2017, <https://bit.ly/3cSidth>

⁴³ UN Committee on the Elimination of Racial Discrimination (CERD), “Concluding Observations on the Combined Twenty-First to Twenty-Third Periodic Reports of Argentina, CERD/C/ARG/CO/21-21,” 11 January 2017, <https://bit.ly/2VZkZG4>

result of having an open asylum claim. In the remaining 98 cases, individuals were removed.⁴⁴

According to information provided to the GDP by the National Penitentiary Office, in July 2019 there were 2,663 foreign nationals in federal prisons in Argentina, which amounts to 19 percent of the total federal prison population.⁴⁵ Within this population, 63 percent are prisoners on remand while only 37 percent have been convicted. In terms of nationality, 96 percent of these prisoners are from South American countries—726 from Peru, 693 from Paraguay, 558 from Bolivia, and 153 from Colombia.

⁴⁴ Procuración Penitenciaria de la Nación, “*Informe de la Procuración Penitenciaria de la Nación para Global Detention Project (Ginebra, Suiza)*,” 12 November 2019.

⁴⁵ Procuración Penitenciaria de la Nación, “*Informe de la Procuración Penitenciaria de la Nación para Global Detention Project (Ginebra, Suiza)*,” 12 November 2019.



3. DETENTION INFRASTRUCTURE

3.1 Summary. Although the Regulation of the National Migration Law (RNML) explicitly states that immigration detention must take place in “adequate spaces, separated from penal prisoners,” Argentina does not have a dedicated immigration detention centre. As a result, officials make use of a range of other facilities including prisons, police stations, and transit zones in airports. Administrative immigration detention is conducted “in spaces of the various security forces that operate as auxiliary migratory police,”⁴⁶ which include the Federal Police, the National Aeronautical Police, the Naval Prefecture, and the National Gendarmerie.

In 2016, the government announced plans to establish an immigration detention centre in Buenos Aires.⁴⁷ The decision, which was presented by the government as a measure to “accommodate and combat irregular migration,”⁴⁸ was heavily criticised by local and international human rights organisations. The facility, however, never appears to have been used. According to the 2017 Annual Report of the National Penitentiary Office, “the site was closed, no building works were being carried out and there was no authority present either from the security forces or from the National Migration Directorate.”⁴⁹ In their 2018 response to the UN Committee on Migrant Workers’ General Comment No. 5 on Migrants’ Human Right to Liberty and their Protection from Arbitrary Detention questionnaire, Argentina noted that the building would have to be completely renovated and reconditioned in order to be used for immigration detention purposes.⁵⁰

Among the sites that have been used with some frequency for immigration detention purposes is a national gendarmerie unit located on the northeast border (“*El Paso Internacional Bernardo de Irigoyen-Dionisio Cerqueira*”) connecting Argentina with Brazil.⁵¹

⁴⁶ Procuración Penitenciaria de la Nación, “*La situación de los derechos humanos en las cárceles de la nación*,” Informe Anual 2018, <https://ppn.gov.ar/pdf/publicaciones/Informe-anual-2018.pdf>

⁴⁷ La Nación, “*Genera polémica la apertura de un centro para alojar a infractores de la ley de migraciones*,” 26 August 2016, <https://bit.ly/2VJ8oYG>

⁴⁸ L. Rosende, “*El gobierno creo un centro de detención de migrantes: alarma entre organismos de DDHH*,” *Política Argentina*, 28 August 2016, <https://bit.ly/2Sgz80A>

⁴⁹ Procuración Penitenciaria de la Nación, “*La situación de los derechos humanos en las cárceles federales de la Argentina*,” Informe Anual 2017, <https://www.ppn.gov.ar/pdf/publicaciones/Informe-anual-2017.pdf>

⁵⁰ Office of the High Commissioner for Human Rights (OHCHR), “Argentina’s Response to the UN Committee on Migrant Workers General Comment No. 5 on Migrants’ Human Right to Liberty and their Protection from Arbitrary Detention questionnaire,” December 2018, <https://www.ohchr.org/EN/HRBodies/CMW/Pages/GC5.aspx>

⁵¹ Procuración Penitenciaria de la Nación, “*La situación de los derechos humanos en las cárceles de la nación*,” Informe Anual 2018, <https://ppn.gov.ar/pdf/publicaciones/Informe-anual-2018.pdf>

Given that the unit is situated several kilometres from the border, it is thus not possible for the authorities to “push back” people denied entry.⁵²

In March 2018, an inspection of the Centro Federal de Detención de Mujeres was carried out by the System of Coordination and Monitoring of Judicial Control of Prison Units. It found that the kitchen sinks were cracked and leaking and that the bathrooms were in precarious conditions.⁵³ In addition, the general hygiene and maintenance of the centre was found to be deficient.⁵⁴

The Covid-19 crisis highlighted the extreme situation in the country’s penitentiaries. On 13 March 2020, the International Observatory for Prisons—Argentina section—wrote to the Ministry of Justice urging authorities to implement measures to prevent the spread of the virus within penal institutions. The letter highlighted the current lack of hygiene products and food supplies, and called on the Ministry to develop a strategy to avoid riots and the spread of the disease.⁵⁵ On 23 and 24 March 2020 however, riots broke out in several penitentiaries, leaving five prisoners dead and many more injured.⁵⁶ In the wake of this, the International Observatory for Prisons expressed its concerns regarding the situation in Buenos Aires’ prisons in a letter addressed to the Supreme Court of Buenos Aires. The letter criticised the lack of measures to mitigate the current situation as well as the recourse to physical violence by security forces as a means to regain control.⁵⁷

On 1 April 2020, the Ministry of Security and Justice and the Ministry of Health established a prevention protocol in the prisons of the Rio Grande province. According to this protocol, each prison will receive medication, sanitary products, and disinfectant. Also, every new arrival will be subject to a medical examination to identify any symptoms of Covid-19.⁵⁸

3.2 List of immigration detention facilities. Unidad 31 – Centro Federal de Detención de Mujeres (Nuestra Señora del Rosario de San Nicolas); Escuadrón Seguridad Vital San Justo; Policía de Seguridad Aeroportuaria, Aeropuerto Internacional de Ezeiza (Ministro Pistarini International Airport); Centro de Alojamiento (Buenos Aires).

⁵² Procuración Penitenciaria de la Nación, “Informe Alternativo de la Procuración Penitenciaria de la Nación Argentina ante el Comité de Protección de los Derechos de todos los Trabajadores Migratorios y de sus familias,” September 2019.

⁵³ Sistema de Coordinación y Seguimiento de Control Judicial de Unidades Carcelarias, “Informe de monitoreo: Complejo penitenciario Federal IV – Ezeiza,” 12 March 2018, <https://bit.ly/2rvlonv>

⁵⁴ Sistema de Coordinación y Seguimiento de Control Judicial de Unidades Carcelarias, “Informe de monitoreo: Complejo penitenciario Federal IV – Ezeiza,” 12 March 2018, <https://bit.ly/2rvlonv>

⁵⁵ Prison Insider, “Coronavirus: la fièvre des prisons,” 18 March 2020, <https://bit.ly/3bOsZ3q>

⁵⁶ Notimerica, “Coronavirus - Cinco muertos por motines en cárceles de Argentina para exigir mayor protección ante el coronavirus,” 24 March 2020, <https://bit.ly/3aDYZ3l>

⁵⁷ Prison Insider, “Coronavirus: la fièvre des prisons,” 18 March 2020, <https://bit.ly/3aKzGIN>

⁵⁸ NoticiasNet, “Refuerzan los Controles Sanitarios en las Cárcel,” 4 April 2020, <https://www.noticiasnet.com.ar/nota/2020-4-4-20-48-0-refuerzan-los-controles-sanitarios-en-las-carceles>



www.globaldetentionproject.org