This paper’s general objective is to analyze the State’s and civil society’s role in the development of migration public policies of the Republic of Argentina.

Firstly, there will be a brief description, based on existing data, of immigration and emigration movements, highlighting labor insertion forms of current migration currents that come from neighboring countries and Peru.

Secondly, the evolution of migration policies up to this day, considering different changes that happened in the last century, are analyzed.

Later, the institutional structure that helps define and develop public policies and migration programs is presented. The regulatory framework that holds and directs these policies is analyzed at different levels and its evolution, including different bi-national and regional agreements which Argentina has signed.

A special chapter is dedicated to international migration programs, both traditional and new ones addressed to immigrants that are settling

* Sociologist by the University of Buenos Aires (UBA) and PhD in Sociology from the University of Paris. Head of the Master’s program on International Migration Policies (UBA). Head of the International Migration Policies and Management specialization program, Universidad Nacional de Tres de Febrero.

1 Refers to Chapter 1. Argentina, in Leonir M. Chiarello (Coordinator) (2011). Las Políticas Públicas sobre Migraciones y la Sociedad Civil en América Latina. Los casos de Argentina, Brasil, Colombia y México. New York: SIMN. Pp-1-144; the parts indicated in the tile are extracted from it for the Journal of Public Administration.
down in the county, as well as those established to face new Argentinian migration movements to other countries.

The above-mentioned parts analyze the State’s and civil society’s role: however, the last part focuses on the role the latter has with international migration policies and programs. To do this, a sample of thirty associations representing different activities was developed to work with structured interviews to their leaders. This way participation forms in research centers, base associations, intermediate associations and non-government organizations are analyzed.

Lastly, this paper presents some proposals on citizen participation on management, information and sensitization, linked to international migration policy and public program definition.

**National Legal Framework: constitutional principles**

The Republic of Argentina is mainly a country of immigrants. Its spirit towards the reception of foreigners and its solid migration tradition were established in the 1853 Constitution and its following reforms (Gianelli, 1998). Rights and guarantees proclaimed in it make clear the importance of immigration and the reception spirit of Argentina.

The 1953 Constitution sanctioned a clear migration policy and under the motto “To govern is to populate” coined by Juan Bautista Alberdi (Sagües, 2006). Thus, the preamble read: “promote general welfare, ensure the benefits of liberty, for us, for our prosperity and for all men that want to inhabit Argentinian soil…” (CMW/C/ARG/1, 2010).

According to the Constitution, the Federal Government (Article 25), the Congress of the Nation (Article 75 subsection 18) and the Provinces (Article 125) are in charge of immigration promotion. The Constitution also states that “the federal government shall not restrict, limit or tax the entrance of foreigners to the Argentinian territory that intend to work the land, improve the industry and introduce and teach sciences and art” (Article 25); thus, the Congress is in charge of passing laws regarding naturalization, nationality and immigration promotion (Article 75 subsection 12 and 18). Consequently, a) the federal government has the exclusive power to authorize or deny the entrance of foreigners into the country; b) legislative competence in general and especially in migration matters is exclusive of Congress; c) the Nation and Provinces can carry out actions or concurrent management to promote immigration (Gianelli, 2001).
The Constitution gives civil and social rights to all of its inhabitants, national or foreign ones. In article 16, the Constitution states that “all inhabitants are equal before the law, admissible to employment based solely on their suitability”.

Article 20 is the pillar of national migration policy, the Constitution is very clear when stating that migrants have the same civil rights as nationals, its text states: “foreigners in the National territory will enjoy all of the civil rights of citizens, they can exercise industry, commerce and profession; own real estate, buying or selling them; navigate rivers and coasts; freely practice their religion; draw up a will and get married. Immigrants are not required to accept citizenship, pay extraordinary taxes. They can be nationalized after two years of living in the Nation; however, authorities can shorten this term in favor of the applicant, citing and proving services to the Republic” (CMW/C/ARG/1, 2010; Sagües, 2006).

When interpreting these articles, the Supreme Court’s jurisprudence accepts the Argentinian nationality be demanded to carry out tasks related to sovereignty and national security, as long as it reasonable and does not involve prosecutorial or hostility² purposes, it is unconstitutional prohibit foreigners from working, for example, as harbor pilots or teach in private schools³. A special case would be the “boarded” foreigner which in war times is a soldier of another country, his locomotion rights would be severed and subject to forced removals. In the “Lange” case, the Supreme Court determined that those in boarding schools were not legally “inhabitants” and did not enjoy the same constitutional rights as every other foreigner⁴. At the same time, the Suprem Court has deemed constitutional those laws that allow the expulsion of those who live irregularly in this country⁵, or of those who are deported for public order and social peace reasons⁶; although this is subject to judicial control of reasonableness.⁷

---

² Supreme Court of Justice of the Nation, “Radulescu”, Fallos, 290:83.
³ Supreme Court of Justice of the Nation, “Repetto”, Fallos, 311:2272.
⁴ Supreme Court of Justice of the Nation, “Lange”, Fallos, 207:125.
⁵ Supreme Court of Justice of the Nation, “Ferreyra Hernández”, Fallos, 271:272.
⁶ Supreme Court of Justice of the Nation, “Maciá y Gassol”, Fallos, 151:211 and “Deportados en el transporte Chaco”, Fallos, 164:344.
Argentinian immigration law

Since the return of democracy in 1983, the human rights' situation of migrants has had two periods: a) the implementation of the 22.439 Law passed in 1981 during the last military dictatorship and b) the abolition of this law and the passing of the new Migration Law in December 2003 (CELS, 2008). The 25.871 Law is the first general legislation in migration matters developed and sanction by a democratic government. It also meant a significant advance because it established the act of migrating as a human right and formally recognized immigrants' rights to health, education, justice, social security, among others (CELS, 2008).

The 25.871 Law was made possible thanks to strong protests by human rights organizations, foreign organizations, religious institutions, academic centers, research groups, union representatives and other social organizations, which agreed on actions and strategies to make Congress repeal the General Migration and Immigration Promotion Law of 1981 (FIDH-CELS, 2011).

In the mid-nineties, thanks to the already established Population Committees in the Chamber of Deputies and Senators and the negotiations made by social organizations, several initiatives to modify the above-mentioned military law were developed (Novick, 2004).

Up until 1994, the modifications made by the National Congress to the 22.439 Law included minor changes related to the updating of the amounts of fines, bails, service remuneration rates and some competences. This way the 23.564 law was sanctioned in 1998; the 23.860 law in 1990; the 24.008 law in 1991 and the 24.393 law in 1994 (Novick, 2004; Courtis, 2006).

After 1994 when the National Constitution was amended and some human rights treaties were included, the parliamentary work was much more active in terms of migration projects elaboration (CELS, 1997; Courtis, 2006). In the 1994-2003 period, several initiatives to modify the military law appeared, the most significant ones were made by deputies: Cafiero (1996 y 1998); Carrió (1996); Mondelo and Dellepiane (1997); Pichetto (1998), among others. Bills to repeal the aforementioned law and replace it with a new one were presented, such as the initiatives by the following deputies: Muñoz et al. (1994); Totto et al. (1995); Mondelo et al. (1999), and the one by the Population Committee of the Chamber of Deputies (1999).
To projects of migration regularization were also presented, one to adopt the Convention on the Protection of the Rights of All Migrant Workers and their families, and other internal migration one. All of them demonstrated the intense parliamentary activity and that the civil society did not accept the validity of military legislation during democratic governments (Novick, 2004; Courtis, 2006). (See Appendix I).

In late 2003, the context exhibited two factors: a) the failure of several legislative projects, some of them wanted to implement an even more restrictive policy than the 22.439 Law; and b) the proceedings before the Inter-American Commission on Human Rights of the De La Torre Case vs the Argentinian State, which questioned the incompatibility of the current law with the standards of immigrants' human rights. These elements provided what was necessary to approve on December 2003 the bill developed by Rubén Giustiniani, legislator and member of the Socialist Party; its discussion included representatives of migrants, several public institutions and civil society (FIDH-CELS, 2011).

As above-mentioned, in the Republic of Argentina, the topic of migration is of founding character. In accordance with constitutional principles, the 25.871 law defines the implementation scope and establishes the goals of Argentinian migration policy, which focuses on the integration of foreigners on an equal footing with nationals; its main goal is to guarantee the rights established in article 2o of the National Constitution (CMW/C/ARG/1, 2010).

“Immigrant”, according to the Law, is any foreign person that wishes to enter, transit, live temporarily or definitely in the Republic of Argentina (Article 2).

In its third article, the law states that the goals of the migration policy are:

- To set basic political lines and lay the strategic foundation on migration and fulfill international commitments of the Republic of Argentina in regards to human rights matters, integration and mobility of migrants;

- Contribute to the implementation of demographic policies established by the Government in accordance with the magnitude, growth rate and geographical distribution of the country’s population.
On the other hand, article 3 states that the goals of rights promotion, integration and protection of migrants are:

- Promote and broadcast migrants’ rights and guarantees, in accordance with the National Constitution, international commitments and laws; keeping up its humanitarian and open tradition with migrants and their families;

- Guarantee the exercise of family reunification right;

- Contribute to the enrichment and strengthening of the cultural and social weave of the country;

- Promote the integration of people who have been admitted as permanent residents into the Argentinian society;

- Ensure the enjoyment of non-discriminatory admission criteria and procedures in terms with rights and guarantees established in the National Constitution, international treaties, current bilateral agreements and laws to every people that wants to be admitted temporarily or permanently into the Argentinian Republic;

- Promote labor insertion and integration of immigrants that reside legally so as to improve their personal and labor capacities and contribute to the economic and social development of the country;

- Facilitate the entrance of visitors to the Republic of Argentina to promote commerce, tourism, cultural, scientific, technological activities and international relationships.

Article 3 also specifies goals in regards to multilateral penal commitments:

- Promote international order and justice, denying access or permanence in the Argentine territory to those involved in criminal acts penally sanctioned by our legislation;

- Promote the exchange of information in the international arena and technical and human resources training to prevent and effectively fight transnational organized crime;
The Law has high protection standards for the rights of immigrants and they seek to integrate the latter into society with the implementation of public policies. The law also states that in Argentina every foreigner has the right to health and education, even those with irregular migratory situations. The State also guarantees immigrants’ right to family reunification with their parents, spouse and children; family is a necessary and important area of stability for every migrant.

In this sense, the Migration Law:

- Reaffirms equal treatment with nationals;
- Enunciates migrants’ rights, ensuring equal access to social services, public goods, health, education, justice, employment and social security;
- States the right to be informed about their rights and obligations;
- Determines the possibility to participate or be consulted in regards to decisions of life and administration of communities where they live;
- Establishes the right to family reunification;
- Guarantees access to education and health, regardless of their immigration status;

This Law introduced into the Argentinian migration regulation the “South American nationality criteria” to admit foreigners; any South American national can turn to this nationality criterion without having to explain their activity or look for another migration admission criterion, i.e. “worker”, “student”, “financial expert” or “investor” to live in our country. Their nationality is reason enough to enter and remain in the country.

Lastly, the admission, entry, permanence and exit of persons from the Argentinian territory are ruled by the regulations of the Migration Law, its Regulations (Decree 616/2010) and other regulations subsequently passed. The General Recognition Act and Refugee Protection (No. 26.165) and the Prevention and punishment of human trafficking and victims’ assistance (No. 26.364) are also enforced.
Link to the international instruments in this area

Current legal order in the Republic of Argentina includes judicial regulations with diverse hierarchy and different areas of validity, all of them in accordance with the National Constitution’s (NC) guidelines. According to Article 31 of the NC, treaties are the supreme law of the Nation. Only the National Executive Power (NC, article 99, subsection 11) can enter into them and the Legislative Power (NC, article 75 subsection 22) can pass or reject them.

After the August 1994 National Constitution amendment, the new constitutional text in its article 75 subsection 22 states that “…treaties and concordats take precedence over laws. 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 its Optional Protocol, 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, the Convention on the Rights of the Child; under the conditions of their validity, do not repeal any article from the first part of this Constitution, and should be understood as complementary to the rights and guarantees recognized herein. They shall only be denounced, in such event, by the National Executive Power after the approval of two-thirds of all the members of each House. Other human rights agreements could also have precedence, with the vote of two thirds of the members of both chambers of Congress.” Subsequently, Congress awarded constitutional precedence to the Inter-American Convention on the Forced Disappearance of Persons in 1994 (24.820 Law of 1997), and in 2003 to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (25.778 Law of 2003).

We can conclude after reading this that the above-mentioned human rights international instruments are on the same level than the rest of the constitutional dispositions and take precedence over national and provincial legislation. In this sense, various decisions of the Supreme Court of Justice of the Nation have confirmed the above-mentioned preeminence. Consequently, since the 1994 reform, articles 20 and 25 of the National Constitution are complemented with the specific
migration regulations included in hierarchical human rights' international instruments.

Public Policies regarding Migration in Argentina

Public policies regarding international migration in Argentina have been historically developed through a general framework of openness, with periodic restrictive stages that correspond to different political-economic moments of the country’s evolution.

The last restrictive stage, the invisibilator of border migrations, which happened during the last military dictatorship, between 1976 and 1982. This period meant the enactment of a law that remained in force for more than twenty years of democracy.

Since 2004, Argentina has had a new migration law (No. 25.871) promoted and supported by different civil society associations and designed to fully respect immigrants’ human rights.

This regulation reflects internal consolidation factors of democracy and citizens’ participation, as well as the ratification of different instruments and international agreements, the evolution of spaces and integration processes and multilateral consensus adopted at both the Southern Cone and the South American region.

The legal framework of immigration policies has been also accompanied by new institutional instances, as well as programs aimed at stabilizing illegal aliens and the return of Argentinians abroad.

Evolution of immigration public policies

International immigration policies in Argentina, and other countries, have always been linked to some kind of predominant foundation, which has varied throughout history.

The analysis of different policies has shown different important factors, from certain perspectives, characterizing each stage according to the analysts’ vision.

Argentinian policies from the 19th and 20th centuries were clearly progressive, taking in millions of immigrants, covering two basic needs: the need for workforce and the population of an empty country. Good
income and employment opportunities determined a continuous and sustained flow of immigrants in accordance with the assumed policies.

Immigrants as contributors to economic, social and cultural development was an important premise during this period. It is important to note that in 1875 the National Congress started the creation of an appropriate legal framework to capture and channel migration currents the country needed. The Executive Power and a Parliamentary Commission each developed projects that gave rise to the first Immigration Law of 1876 (Law No. 817), known as the Avellaneda Law, it focused on the selection process of immigrants, the care of people during their trip, their arrival in the country and giving them the most favorable conditions. This law was enacted to promote immigration and served as a general framework for the massive migration process that occurred between 1890 and 1914. None of the articles or the March 4th 1880 Regulation include control, prevention or repression measures. This law was conceived in a liberal era: “their liberalism translates into generosity and immigrant protection” (Romagnoli, 1991).

The ever growing participation of immigrants and the creation of workers’ associations and socialist and anarchist political movements started to become a growing concern for ruling classes. The threat to order and social cohesion gave birth to regulation such as the Residence Law (No. 4144/1902), Social Defense Law (No. 7209/1910) and Regulations of the Avellaneda Law (Decree of December 31st 1923).

These anti-migration spasms have led to interpretations that consider that from one moment to another the working immigrant became a “public enemy”. Perhaps this characterization, which has been generalized, has created some confusion regarding the reaction of the ruling class and the subsequent regulations and the reality that Argentinian society kept on living in regards to immigrants. The latter were still accepted and received by society, policies were still open and focused on promotion (the decade after the Residence Law had the highest migration rate of Argentinian history) and the implementation of said regulations the decades they existed was extremely low.

The 1930’s is another milestone, immigration restriction, decrees No. 13.335 of 1932 and No. 8972 of 1938 regulated the entry of foreigners with impediment criteria that varied according to immigrants’ origins. Unemployment resulting from world crisis and internal se-
curity against immigrants “non-compatibility” with order, culture and national customs were its foundations.

The change occurred in 1947 with the Peronist government, its Basic Laws on Immigration, Colonization and Population repeals restrictive regulations and starts to promote immigration.

The inclusion of these policies in the planning process of the Five-Year Plans was made according to spontaneity, selection and channeling principles, as well as social justice criteria. The “spontaneity” principle referred to being opened to any type of migration, without subventions, or origin considerations (principle established in article 38 of the 1949 Constitution, where any form of racism is condemned). The “selectivity” principle was based on attracting qualified human resources for the industrial development plan of the government. The “channeling” principle is related to the colonization or population of rural areas, especially unproductive latifundium.

Between 1947 and 1955, approximately 900,000 immigrants settled in the country, 85% were from overseas and 12% came from neighboring countries.

This information is important in the new vision of immigration policies of those times, where recognition, appreciation and regulation to these immigration currents within a conception of Latin American integration. Thus, the two first Peronist governments made agreements with temporal border workers and in 1953 an agreement with Chile is signed which allowed direct documentation of Chilean nationals residing in Argentina.

In this period the first program of immigration regulation was created with the support of civil society in 1949, which was directed to Jewish immigrants that had come into the country without any documents (Avni, 1983).

The years after the military coup of 1955 were of restriction-regulation alternation directly related to the civil or military governments. Irregular immigrants that came into country during military governments were regularized by subsequent amnesties of civil governments (Mármora, 1983). A special situation occurred with the 1973 immigration amnesty, whose goal was to accommodate border immigrants that lived in Argentina due to military dictatorships that were established in their countries of origin.
The sanction of the 22.439 Law, called the “Videla Law” in 1981 gave content to the “national security” principle as foundation for immigration policies. (Non-European) immigrations were seen as national security threats, control and police power and extraordinary faculties given to the Immigration Board were applied.

This Law’s existence for over twenty years of democracy shows the difficulties the system had to repeal it.

Meanwhile in the 1980’s and 1990’s the “securitization” regulations and the different regularization processes of border immigrants co-existed.

A special phenomenon, different from the fundamentals and perspectives of the history of these policies, came about on the second lustrum of the 1990’s. Some analysts state that this period was characterized by the rise of xenophobia of the Argentinian society before border immigrants, accompanied by strong restrictions and police persecution.

A more profound look would demonstrate that these prejudices were created because of one of the biggest “immigration businesses” in the world, a contract was signed by the Argentinian government and Siemens Company in 1998 to print new identity documents and computerize border checkpoints. The contract, according to declarations from the company’s employees, was agreed on because of bribes given to on-duty officials. The contract was cancelled in 2001 by the following government; the company started a trial against the Argentinian government in the International Centre for Settlement of Investment Disputes (ICSID), the company later gave up when irregularities were proven in international courts.

In this same period, other State organisms such as the Ministry of Foreign Affairs started to sign bilateral agreements with Bolivia, Peru and Paraguay, which opened the possibility of regularization and guaranteeing an equal treatment of immigrants of these countries.

These agreements, besides those periodically signed since the 1960’s, were prelude to another stage of Argentinian immigration policies. Law No. 25.871 was passed, after a five-year process of discussions and consensus between the government, parliament and civil society; it was sanctioned on December 2003 and regulated six years later after work done by a commission made up by representatives of different government and non-government institutions.
This Law is based on the free mobility of people principles; it favors free integration of foreigners into the social body in equal conditions to nationals and the elimination of all forms of racism, discrimination and xenophobia (Giustiniani, 2004). Beyond its intrinsic value, the above-mentioned Law was an essential element in advancing regional instruments that nowadays allow free residence of citizens of MERCOSUR countries, Chile and Bolivia.

In this context, the Argentinian government implemented the “Patria Grande” Program that in the last couple of years has allowed the regularization of hundreds of thousands of immigrants that come from South America.

In this case, fundamentals are based on human development immigration goals as an essential principle of any governance immigration form that is established.

**Civil society’s participation on Argentinian immigration policy**

International immigration public policies in Argentina were always closely related to different proposals, reactions or activities of the civil society.

The permanent unsatisfied demand of workforce in different sectors of economic activity promoted active immigration openness and promotion policies from the beginning of its republican life. Nonetheless, this openness framework, transformed into periods of active promotion, was interrupted on several occasions by explicit policies or implicit restriction ones; the economic crisis of 1929, WWII, the recurrent military dictatorships since 1955 or the second lustrum of the 1990s decade.

On the other hand, the insertion of migrations into the social and economic structure of Argentina had different effects at a political and social perception level. These reactions could be observed at the beginning of the 20th century when the active role of immigrants in the creation of workers’ unions brought on a negative reaction of the ruling sectors, this was expressed in a Law that allowed the expulsion of foreigners that were considered to be dangerous for social peace.
On the other hand, immigrant associations were the ones that gave integration and social assistance policies to immigrants, especially in health and education areas.

In the last decades, the role of civil society, in its different forms, has been essential to define immigration public policies and their development, playing a special role in the protection of immigrants’ human rights.

In the last couple of decades changes in migration flows were also observed, not only related to the entry and departure of the country. Traditional migrations from overseas stopped, as well as some flows from neighboring countries such as Chile and Uruguay; migrations from Bolivia, Paraguay and other South American countries like Peru stayed the same and increased; new migration currents from Eastern Europe and Asia appeared and an emigration process of Argentinians to other countries was set in motion.

These changes brought on policy and migration program transformations. Thus, border immigration, which had been denied up to the last military dictatorship has been recognized in current regulations and has been the object of special programs of migration regulation, such as the “Patria Grande” program.

On the other hand, return programs which had tremendous activity during the recovery of democracy period in the 1980’s have had continuity in programs of connection and return of Argentinians which are residing abroad. In turn, to increase citizen participation of Argentinian emigrants, the Ministry of Interior designed a special program called “Provincia 25” (25th Province).

These policies and programs correspond to an institutional structure based on different parts of the State; however, since the middle of the last century the Ministry of Interior has had primary mandate on this topic.

The inter-institutional articulation to define and manage immigration policies and programs has a weak structure, appearing explicitly only in broader policy instances, such as the Federal Population Council (COFEPO).

Current international immigration policies are included in the 2004 law, characterized by a clear definition of immigrants’ human rights.
This protection and immigration openness regulation is directly linked to the advances made by MERCOSUR, especially with the “The Free Movement and Residence Agreement of MERCOSUR citizens and associated countries” and the South American Human Development Plan for Migration of the South American Conference of Migrations.

These advances in free movement and residence have been permanently promoted and supported by different action from the civil society, in its different forms, study centers, base organizations or non-government organisms; they have contributed to the consolidation of open international immigration public policies, linked to regional integration and respect of immigrants’ human rights.