



**International Convention on the  
Protection of the Rights of  
All Migrant Workers and  
Members of Their Families**

Distr.: General  
15 December 2010  
English  
Original: Spanish

---

**Committee on the Protection of the Rights of All  
Migrant Workers and Members of Their Families**  
Thirteenth session  
22 November–3 December 2010

**Consideration of reports submitted by States parties under  
article 74 of the Convention**

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

**Ecuador**

1. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families considered the second periodic report of Ecuador (CMW/C/ECU/2) at its 140th and 141st meetings (CMW/C/SR.140 and 141), held on 23 and 24 November 2010. At its 155th meeting, held on 3 December 2010, the Committee adopted the following concluding observations.

**A. Introduction**

2. The Committee welcomes the submission of the State party's second periodic report, as well as the replies to the list of issues and the additional oral information provided by the delegation, which gave the Committee a better understanding of the implementation of the Convention in the State party. The Committee appreciates the frank and constructive dialogue with a competent delegation and welcomes the regular nature of this dialogue.

3. The Committee recognizes that Ecuador, as a country of origin of migrant workers, has made progress in protecting the rights of its nationals abroad. However, as a country of transit and destination, it faces major challenges in regard to protection of the rights of migrant workers.

4. The Committee notes that some of the countries in which Ecuadorian migrant workers are employed are not yet parties to the Convention, which may constitute an obstacle to enjoyment of their rights under the Convention.

## B. Positive aspects

5. The Committee welcomes the State party's efforts to promote and protect the rights of Ecuadorian migrant workers abroad and the 10 alliances and agreements signed as of September 2009, including the memorandum of understanding on cooperation in consular and migration matters with Belgium and the cooperation agreement with Paraguay.
6. The Committee further welcomes the signing of the Ecuador-Peru Permanent Migration Statute designed to regularize Peruvian and Ecuadorian migrant workers in the two countries.
7. The Committee notes with appreciation the regularization of some 400 Haitians resident in the State party following the earthquake in Haiti on 12 January 2010.
8. The Committee welcomes the abolition, as from 29 December 2007, of the exit permit requirement for nationals and foreigners wishing to leave Ecuador.
9. The Committee is pleased to note:
  - (a) The recent ratification of the Ibero-American Social Security Convention (2010);
  - (b) The entry into force of Ministerial Decision No. 337/2008, which guarantees access to preschool, primary and secondary education for children, including adolescents, of foreign migrant workers, regardless of their migratory status; and
  - (c) The creation of the "Virtual Consulate" website to improve access to information on consular services.
10. The Committee further welcomes Ecuador's accession to the following international human rights instruments:
  - (a) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, in 2008;
  - (b) The International Convention for the Protection of All Persons from Enforced Disappearance, in 2009;
  - (c) The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, in 2009.

## C. Main subjects of concern, suggestions and recommendations

### 1. General measures of implementation (arts. 73 and 84)

#### *Legislation and application*

11. The Committee notes that the State party has not yet made the declarations provided for in articles 76 and 77 of the Convention, recognizing the competence of the Committee to receive communications from States parties and individuals.
12. **The Committee reiterates its previous recommendation (CMW/C/ECU/CO/1, para. 11) that the State party should consider making the declarations provided for in articles 76 and 77 of the Convention.**
13. The Committee takes note of the information submitted by the State party on the efforts made to obtain approval by the National Assembly for ratification of the International Labour Organization (ILO) Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant

Workers (No. 143) of 1975. However, it notes with concern that the State party has not yet acceded to the Convention.

**14. The Committee reiterates its previous recommendation (CMW/C/ECU/CO/1, para. 13) to the State party and encourages it to speed up its efforts to ratify ILO Convention No. 143.**

15. The Committee takes note of the entry into force of the 2008 Constitution, which incorporates rights and guarantees for national and foreign migrant workers and recognizes migration as a right. However, the Committee is concerned by the disparities that exist between the Constitution and the secondary legislation in force, including: the Migration Act and principally its articles 9, 16, 19, 31, 36 and 37, the last of which concerns offences related to migration; the Aliens Act, article 9, VII; the Travel Documents Act (art. 20), which indicates that “the Government does not take responsibility for Ecuadorians who leave the country”; Regulation 1181 concerning the Private Surveillance and Security Act (art. 2, para. 3), which prohibits foreigners from working in private security firms; and the Marginal Urban and Rural Housing Regulation, article 3 of which states that only Ecuadorians are eligible for the housing benefit concerned.

**16. The Committee encourages the State party to revise any secondary legislation that is not in conformity with the Constitution and with international human rights standards in order to guarantee the full implementation of such standards. It also recommends that the State party should adopt as soon as possible the Human Mobility Act which ensures in practice the rights and principles recognized by the Constitution and by the Convention, including the principle of non-discrimination.**

#### *Data collection*

17. The Committee welcomes the announcement that in November this year the State party will carry out a further census to include questions on remittances and migration. It also takes note of the efforts made to improve data collection and in particular the establishment of the National System of Information on Migration. However, it regrets that the system is not yet operational and that no single consolidated statistical information system is yet available. The Committee also regrets the lack of information from the State party on the different criteria for evaluating the effective implementation of the Convention, in particular with regard to migrants in transit, migrant women, unaccompanied migrant children and cross-border and seasonal migrant workers.

**18. The Committee recommends that the State party should step up its efforts to bring into operation the National System of Information on Migration in order to better understand migratory flows and improve the design of Government policies. It also recommends that this centralized database should take into account all aspects of the Convention and include detailed information on migrant workers present in the State party, those in transit and emigrants, and encourages the State party to gather information and statistics differentiated by sex, age, reasons for entering and leaving the country and work performed. Whenever it is not possible to obtain precise information, such as information on migrant workers in an irregular situation, the Committee would appreciate receiving data based on studies or estimates.**

#### *Training in and dissemination of the Convention*

19. The Committee notes with satisfaction the efforts made by the State party to disseminate the Convention. However, the Committee regrets that no specific permanent programmes have yet been developed and carried out to provide training on the content of the Convention. It also regrets that the inter-agency governmental committee to monitor progress in the application of the Convention has not yet been established.

20. The Committee reiterates its recommendation that the State party should strengthen and expand education and training programmes on the content of the Convention with a view to making them permanent. It also recommends that the training should encompass all officials whose work involves migration, including at the local level, and that the State party should speed up the establishment of the inter-agency governmental committee (CMW/C/ECU/CO/1, paras. 17 and 18). The Committee encourages the State party to continue its efforts to ensure that migrant workers have access to information on the rights to which they are entitled under the Convention, and to collaborate with civil society organizations in disseminating information on and promoting the Convention.

*Participation of civil society*

21. The Committee is concerned by the limited participation of civil society and non-governmental organizations in the implementation of the Convention, especially in the drafting of reports.

22. **The Committee encourages the State party to consider more active ways of systematically involving civil society and non-governmental organizations in the implementation of the Convention and in the preparation of its next report.**

**2. General principles (arts. 7 and 83)**

*Non-discrimination*

23. The Committee reiterates its concern about the discriminatory attitudes and social stigmatization from which migrant workers and members of their families may suffer (CMW/C/ECU/CO/1, para. 19) in the State party. It is concerned by the prevalence in the media and among the authorities and the majority of the population of a generally negative image of foreigners working in the State party, mainly Colombians, Peruvians, Cubans and Chinese, associating them with lack of safety, violence, prostitution or access to employment to the detriment of Ecuadorians.

24. **The Committee reiterates its previous recommendation (CMW/C/ECU/CO/1, para. 20) and encourages the State party to:**

(a) **Intensify its efforts to ensure that all migrant workers and members of their families within its territory or subject to its jurisdiction enjoy the rights provided for in the Convention without discrimination of any kind, in conformity with article 7;**

(b) **Take immediate and effective measures, in particular awareness-raising campaigns to combat prejudices and social stigmatization for public officials working in the main areas of immigration, including at the local level, and for the general public; and**

(c) **Punish discriminatory practices in the media and in public and private institutions.**

25. While taking note of the State party's explanations, the Committee regrets that the State party continues to require a certificate of criminal record for entry into the State party exclusively for Colombian migrants, as this may contribute to their stigmatization and stereotyping and is inconsistent with article 2 of the Constitution, which imposes an obligation not to discriminate against anyone on the basis of their criminal record.

26. **The Committee reiterates that the State party should take the necessary measures to guarantee the principle of non-discrimination in practice and urges it not to pursue discriminatory policies aimed at a specific group of migrants. The**

Committee also invites the State party to review and revoke the requirement for Colombian migrants entering the State party to produce a certificate of criminal record.

**3. Human rights of all migrant workers and members of their families (arts. 8–35)**

27. The Committee reiterates its concern over the discrimination, exclusion and exploitation suffered by women migrants in the State party, and their lack of access to labour rights and social benefits, especially in the case of those working in domestic service (CMW/C/ECU/CO/1, para. 37). The Committee also notes with concern that, in the majority of cases, women do not have access to employment that is in keeping with their level of training, for reasons of both discrimination and legal limitations. It also regrets the lack of information on the inclusion of a gender focus in the State party's migration policies.

**28. The Committee encourages the State party to continue its efforts to protect women domestic workers, including access to regular migration status, the systematic involvement of the labour authorities in monitoring their working conditions, and the promotion of access to mechanisms for bringing complaints against employers. The Committee urges the State party to continue its efforts to promote the enhancement and empowerment of migrant women in vulnerable situations by, inter alia, conducting an assessment and taking concrete measures to address the feminization of migration in its labour migration policies.**

29. The Committee is concerned that expulsion and deportation procedures continue to be essentially criminal procedures, contrary to the provisions of the Convention. While taking note of the establishment of a deportation protocol, the Committee regrets the lack of effective measures to implement that protocol and the lack of statistics on deportations. The Committee is concerned that cases of arbitrary detention and failure to appoint an interpreter continue to be reported.

**30. The Committee reiterates its previous recommendation that the State party should ensure that migration procedures, including deportation and expulsion (CMW/C/ECU/CO/1, para. 26), are in accordance with article 22 of the Convention and that they are exceptional procedures of an administrative nature and are not handled by the criminal justice system. The Committee urges the State party to carry out the necessary investigations into irregularities committed during recent operations and to duly punish law enforcement officials who do not respect the migration procedures.**

31. The Committee regrets that the deprivation of liberty of persons in an irregular situation takes place in prisons for ordinary offences or in pretrial detention centres that are overcrowded and in poor condition, without access to basic social services.

**32. The Committee recommends that the State party should adopt measures to improve conditions in temporary detention centres so that they are not the same as prisons, and that men and women should be duly separated. It also recommends that the State party should ensure the provision of basic social services, including food, health care and hygienic conditions, and encourages the State party to expedite exit procedures.**

33. The Committee notes the efforts to regularize the Peruvian population in the State party. It is concerned, however, that the current procedures to regulate the migrant population in the State party are difficult to access, whether because of cost or distance, or because they are aimed at migrant workers involved in entrepreneurial activities. It is also concerned that because there is no comprehensive regularization mechanism, the authorities are resorting to the programme for expanded registration for refugees, which demonstrates

a lack of understanding of the application of the safeguards established for the treatment and international protection of those who need them. The Committee also regrets the cases of expulsion of refugees and persons in need of international protection.

34. **The Committee encourages the State party to redouble its efforts to establish and implement a comprehensive migration regularization policy that is accessible to all migrant workers and members of their families in an irregular situation and satisfies the principle of non-discrimination. It also recommends that the State party should carry out a programme of ongoing training for border and immigration officials on the application of the safeguards established for the treatment and international protection of those who need them, including the procedures to be followed to distinguish between the specific characteristics of the Convention and the identification of refugee status. The Committee urges the State party to expand its cooperation with international bodies such as the Office of the United Nations High Commissioner for Refugees (UNHCR).**

35. The Committee is concerned by the cases of children of Ecuadorians residing abroad who have not obtained Ecuadorian identity documents or who are not registered in the birth register and who have been denied entry to the State party by the migration authorities under the Migration Act.

36. **The Committee recommends that the State party should guard against the use of procedures that, in contravention of article 8 of the Constitution, violate the human rights of children of Ecuadorians residing abroad, and that it should ensure that such children are registered in the birth register. It also recommends that appropriate ongoing training should be given to the migration service officials of the National Police in order to implement the rights of migrant workers and members of their families with respect to issues of international migration.**

37. The Committee regrets the large number of persons at risk, and especially child migrants involved in prostitution in the Lago Agrio region, despite the State party's efforts to eradicate trafficking in persons and commercial sexual exploitation.

38. **The Committee reiterates its previous recommendation (CMW/C/ECU/CO/1, para. 33) and encourages the State party to:**

(a) **Strengthen all bodies of the Decentralized National System for Comprehensive Protection of Children and Adolescents, including by allocating adequate human and financial resources;**

(b) **Raise awareness among the general public of the harmful effects of all forms of commercial sexual exploitation of children, particularly child prostitution;**

(c) **Establish appropriate mechanisms for the physical and psychological rehabilitation and social reintegration of victims.**

39. The Committee notes with appreciation the State party's efforts to promote dialogue and collaboration among various actors to eradicate the worst forms of child labour. It remains concerned, however, by the involvement of child migrants in domestic child and adolescent labour in conditions comparable to a contemporary form of slavery, as well as in hazardous work in garbage dumps and the mining industry.

40. **The Committee recommends that the State party should continue and redouble its efforts to eliminate child labour and the worst forms of child labour and that it should introduce the International System for the Protection of Migrant Children and Adolescents. It also encourages the State party to continue its collaboration with the ILO International Programme on the Elimination of Child Labour (IPEC). The Committee requests the State party to gather specific data on the number of**

unaccompanied or separated child and adolescent migrants in Ecuador and the type of work they perform and to provide this information in its next periodic report.

**4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36–56)**

41. The Committee is concerned that the provision in the Labour Code prohibiting foreign nationals from becoming members of a workers' association or trade union has been maintained (CMW/C/ECU/CO/1, para. 41).

**42. The Committee reiterates its previous recommendation (CMW/C/ECU/CO/1, para. 42) and encourages the State party to take the necessary measures to guarantee to migrant workers and members of their families the right to form, and to form part of the executive bodies of, associations and unions, in accordance with article 40 of the Convention as well as with the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which the State party has ratified.**

**5. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64–71)**

43. The Committee expresses its concern about the apparent lack of coordination between the institutions and services that deal with the various aspects of migration policy in the State party.

**44. The Committee encourages the State party to clarify the mandates of the public administration institutions that deal with the various aspects of migration and to strengthen the National Secretariat for Migrants as the coordination mechanism with a view to improving the services provided to migrant workers and members of their families, while ensuring uniformity and conformity of those services with the regional and international treaties to which Ecuador is a party. The Committee also encourages the State party to ensure that the Convention is taken into account in the formulation and implementation of all policies concerning the rights of migrant workers.**

45. The Committee notes with interest the voluntary repatriation programmes for migrant workers and members of their families in the State party but regrets the lack of involvement of those persons in drawing up such programmes.

**46. The Committee urges the State party to promote the participation of migrant workers and members of their families in the design of voluntary repatriation programmes that have a direct impact on their social and cultural reintegration.**

47. The Committee regrets the lack of data and information on the situation of emigrants' children, including adolescents, who remain in the State party, in particular with respect to their family and educational environment, especially in view of the high number of migrant women. It also regrets the lack of information on policies to protect the children of migrant workers in the State party, including those in an irregular situation.

**48. The Committee recommends that the State party should carry out studies on the situation of emigrants' children, including adolescents, who remain in the State party with a view to formulating care, protection and family reunification policies. It also encourages the State party to focus on developing policies that address the difficulties faced by the children of migrants, including the children of migrant workers in an irregular situation, as a result of their situation and to guarantee the full enjoyment of their rights.**

49. The Committee takes notes of the State party's efforts to combat trafficking in persons. However, the Committee is concerned about the lack of coordination on the part of

State party institutions and shortcomings in the provision of protection and care for victims of trafficking by the State party. It also notes that steps taken under the national plan to combat human trafficking, the smuggling of migrants, sexual exploitation, labour exploitation and other forms of exploitation, and prostitution of women, children and adolescents, child pornography and corruption of minors have mostly concerned human trafficking. It is concerned about cases of deportation involving foreign victims of trafficking and regrets that there is no legislation implementing article 42 of the Constitution, which prohibits any arbitrary displacement, and article 66, paragraph 29 (b), which prohibits slavery, exploitation, servitude, human trafficking and people smuggling in all their forms.

50. **The Committee recommends that the State party should take further measures to combat trafficking in persons, in particular:**

- (a) Formulation of a plan focusing exclusively on human trafficking;**
- (b) Adoption of laws and regulations to ensure implementation of legislation to combat human trafficking;**
- (c) Provision of appropriate intensive training for the “specialized police team” in order to strengthen its capacities with respect to victim identification, and ongoing training for public officials, in particular the National Police, judges and officials in the criminal courts, prosecutors, labour inspectors, teachers, health professionals at the national level and representatives and officials of Ecuadorian embassies and consulates;**
- (d) Systematic collection of disaggregated data in order to better combat trafficking in persons;**
- (e) Adoption of measures to ensure that those responsible for trafficking in persons are tried and appropriately punished;**
- (f) Intensification of campaigns for the prevention of irregular migration, including trafficking in persons;**
- (g) Formulation of a strategy to ensure respect for victims’ rights and development of projects to help the victims of trafficking rebuild their lives, taking into account the physical, psychological and social consequences of their suffering;**
- (h) Protection of workers in reception centres and shelters for the prevention of trafficking and the provision of protection and services to its victims.**

51. **With regard to the smuggling of migrants, the Committee reiterates its recommendation to the State party to continue, and to step up, its efforts in this area, in particular:**

- (a) To ensure that migrant workers in an irregular situation are not criminalized;**
- (b) To carry out appropriate investigations and measures in order to punish those responsible for the smuggling of migrants;**
- (c) To step up campaigns for the general public at the local level on the risks of irregular migration.**



**6. Follow-up and dissemination***Follow-up*

52. The Committee requests the State party to include in its third periodic report detailed information on measures taken to follow up on the recommendations made in these concluding observations. The Committee recommends that the State party should take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and relevant action to the National Assembly, as well as local authorities.

*Dissemination*

53. The Committee likewise requests the State party to disseminate these concluding observations widely, including to public agencies, the judiciary and non-governmental organizations and other members of civil society, and to take steps to make them known to Ecuadorian migrants abroad and foreign migrant workers residing or in transit in Ecuador.

**7. Next periodic report**

54. The Committee requests the State party to submit its third periodic report by 1 July 2015.

---