



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

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

**Consideration of reports submitted by States  
parties under article 73 of the Convention**

**Second periodic report**

**Colombia\*, \*\***

[18 October 2011]

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

\*\* The annexes are available for consultation in the files of the secretariat.

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## I. Introduction

1. In accordance with article 73, paragraph 1 (b), of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Government of Colombia is submitting its second periodic report for consideration by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (the Committee). This report provides up-to-date information on the measures taken between 2009 and 2011 to give effect to the provisions of the Convention.

2. The Government of Colombia presented its initial report on compliance with the Convention (CMW/C/COL/1) on 25 January 2008, and it was considered by the Committee on 21 and 22 April 2009.

3. Colombia was one of the countries that called for the negotiations leading to the adoption of the Convention, and the country has maintained an unshakable commitment to the promotion and protection of the rights of migrant workers and their families, irrespective of migration status.

4. During the period covered by the present report, the Colombian authorities have held firmly to the position that the subject of international migration, and that of migrant workers in particular, must be addressed comprehensively and in accordance with the principle of consistency, which means “doing as you would be done by”, and of a further four principles discussed later in this report. Accordingly, the Colombian Government will act consistently in respect of international migration dynamics: aliens in Colombia will be given the same treatment as our nationals abroad.

## II. General information

### A. Disaggregated data on the characteristics and nature of migratory flows (immigration, transit and emigration) affecting the State party

5. The comprehensive migration policy of the Colombian State is designed to uphold, protect and guarantee the rights of all persons involved in migration processes and create conditions under which the decision to migrate may be taken freely so that all citizens can shape their own destiny with assistance and protection from the State. Colombia also respects the migration laws of the destination States hosting Colombian migrants and expects the principle of freedom of movement, which is fundamental to the way the comprehensive migration policy is applied within the country, to be upheld in migration processes irrespective of the migration status of the individuals concerned, as part of a human rights-based approach.

6. The increasing outward migration of Colombian nationals is a highly complex dynamic that has generated effects, both positive and negative, upon the country’s development. The negative effects in Colombia itself include: the loss of highly skilled human capital; the separation of families; the inflationary impact of remittances; and the weakening of workers’ ties to the labour market. Negative transit and destination effects include: human trafficking; breaches of human rights; lack of access to social services; underemployment; persecution by migration authorities; and xenophobia. Conversely, the increased remittances sent by Colombians, temporary and circular labour migration (TCLM)<sup>1</sup> and the return of Colombian human capital educated abroad are some of the

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<sup>1</sup> This is defined as a form of controlled labour migration instigated by local firms in the destination

positive effects. Again, migrants “are especially vulnerable and therefore require protection from the State wherever they are, and this generates challenges of inter-institutional coordination and conceptual harmonization when the assistance required has to be provided in extraterritorial contexts.”<sup>2</sup>

7. The State has also made progress in the way it deals with migration processes. However, migration is a dynamic process that entails new challenges as regards the support given to Colombians abroad to enhance the positive effects of migration as a factor in the country’s development. This means there is a need to formulate and implement inter-institutional coordination and support strategies that can provide an effective, coherent response to the migration dynamic.

8. Given the above, and in accordance with the guidelines set out in the 2006–2010 “Community State: development for all” national development plan, the need arose for the National Council on Economic and Social Policy (CONPES)<sup>3</sup> to prepare a document setting out a comprehensive, coherent and well-organized public migration policy that could meet the needs and expectations of Colombians abroad.

9. The CONPES comprehensive migration policy document subjected this policy to consideration by CONPES. The comprehensive migration policy encompasses intervention approaches, strategies and actions for Colombians living abroad and aliens living in Colombia. It focuses on: (a) dealing comprehensively with each dimension of development<sup>4</sup> in this population and (b) improving the effectiveness of the instruments used to implement strategies and programmes relating to the migrant population.

10. In implementing the actions described in this document, the aim is to give effect and continuity to the constitutional and legal mandates covering this area and to the policy goals formulated in the 2006–2010 national development plan mentioned earlier.

11. The policy is the outcome of different processes of coordination and analysis involving communities of Colombians resident abroad<sup>5</sup> and the State institutions responsible for migration issues. As a general condition, the comprehensive migration policy is primarily designed to uphold, protect and guarantee the rights of all persons involved in migration processes and create the conditions under which the decision to migrate may be taken freely so that all citizens can shape their own destiny with assistance and protection from the State.

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country and regulated and approved by the States of origin and destination, providing migrants with a legal residency status that creates legal certainty for both the employer and the employee, acts as a spur to regular migration and reduces irregularity. It is temporary because the jobs concerned are done for periods of time ranging from six to nine months with the possibility of extension up to two years. These factors mean that migrants return to Colombia with work and personal life experiences that they can then apply at home.

<sup>2</sup> National University, Social Studies Centre (CES), “Lineamientos para la Política Integral de Migraciones”, May 2008. Consultancy contract between the Ministry of Foreign Affairs and the National University.

<sup>3</sup> The National Council on Economic and Social Policy (CONPES) was created by Act 19 of 1958. It is the highest planning authority in Colombia and advises the Government on all matters relating to the country’s economic and social development. To discharge this role, it coordinates and orients the bodies responsible for government economic and social policy by reviewing and approving general policy development documents submitted in session. The National Planning Department acts as the executive secretariat of CONPES and CONPES Social, and is thus responsible for coordinating and presenting all documents for discussion in session.

<sup>4</sup> By the dimensions of development are meant all forms of human potential that can be fostered by the State in the economic, educational, social, political and cultural spheres.

<sup>5</sup> Meetings to publicize and discuss this policy were held with Colombian communities in New York, Madrid, Caracas, Quito and Miami in 2008.

12. The comprehensive migration policy recognizes five principles to be followed in measures to address the dynamics of migration and any public policies implemented to remedy the neglect of migration phenomena:

(a) The consistency principle: doing as you would be done by. The Colombian State is to deal consistently with international migration dynamics. The idea of reciprocity will guide policymaking, actions and the extension, creation or repeal of migration laws;

(b) The principle of comprehensiveness and long-term thinking: the comprehensive migration policy must match the dynamics of migration itself, globalization and political, economic, social and cultural circumstances both in destination countries and in Colombia itself. This will provide flexibility to deal with migration situations;

(c) The concordance principle: the comprehensive migration policy is considered an essential part of the foreign policy of Colombia. Accordingly, the positions adopted by Colombia when negotiating bilateral and multilateral treaties and agreements need to be concordant with the comprehensive migration policy;

(d) The principle of full enforcement of individual guarantees: migrants are subjects of rights and obligations, in accordance with Colombian legislation and international law. Accordingly, Colombians abroad and aliens in Colombia are recognized as possessing intrinsic rights both in the international sphere and likewise in Colombian legislation;

(e) The targeting principle: as a general rule, assistance provided to Colombians abroad and aliens in Colombia will give priority to those who are in a situation of vulnerability because of their status or situation in the destination countries concerned.

13. Colombians' right to enter and leave Colombian territory is part of the freedom of movement provided for by article 24 of the Colombian Constitution: "Subject to any limitations established by law, all Colombian citizens are entitled to move about freely within the country, to enter and leave it and to remain and reside in Colombia"; in this constitutional precept, the conclusion is that the right to free movement is not absolute and may thus be limited in its application to laws dealing with aliens.

14. Aliens resident in Colombia may move freely throughout the country in accordance with the provisions of article 100 of the Constitution, which establishes that "in the territory of the Republic, aliens shall enjoy the guarantees granted to citizens, subject to any limitations established by the Constitution or by law".

15. Any restrictions imposed must have been established by law for the purpose of protecting national security, public order, public health or morals or the rights or freedoms of others.

16. In relation to this right, and considering the functions of the Administrative Department of Security (DAS) as the migration authority, it is important to note that the right of Colombians to leave the country may be limited solely and exclusively by the existence of an arrest warrant or travel restriction order issued against them by a competent authority and, in the case of minors, the withholding of permission to leave the country by one or other of the parents.

#### **1. Permits issued to aliens in Colombia**

17. The function performed by the Administrative Department of Security (DAS) as the migration authority is established and exercised in accordance with the provisions of

Decree 4000 of 30 November 2004.<sup>6</sup> The right to enter the country and controls on aliens are regulated as follows:

18. All individuals wishing to enter the country must present themselves to the migration authority with a valid passport or travel or identity document, as applicable, and with the appropriate visa where required, at one of the places designated for the movement of persons. At the point of entry into the country they will be subjected to the migration controls carried out by DAS to determine that their entry is lawful.

19. Foreign visitors are authorized to enter and remain in the country, unless a visa is required for entry, "subject to presentation of a return ticket".

20. This authorization falls into the following categories: tourist visitor permits and temporary visitor permits, allowing the following activities to be carried out for up to 180 days in a calendar year:

(a) Tourist visitor permit: this allows visitors to undertake leisure and recreational activities for up to 90 calendar days, with the option of a further 90-day extension in the same calendar year;

(b) Temporary visitor permit: this allows visitors to participate in academic activities, seminars, conferences, symposia and exhibitions, and in non-regular courses or programmes of study not exceeding an academic semester; to receive medical treatment; to attend staff selection interviews in public or private organizations; or for commercial and/or business contact purposes, for up to 180 calendar days within the same calendar year.

21. For academic activities, seminars, conferences, symposia, exhibitions, courses or study programmes, the alien must present a letter of invitation, registration or acceptance from the organization concerned upon entry.

22. For a temporary visitor permit to be granted to aliens intending to participate in free and unpaid sporting, scientific or cultural events, the organization or institution concerned will be required to make an application in which it accepts responsibility and explains the reasons for the alien's presence on Colombian territory for the duration of the event, this to be presented when the alien enters the country. This permit may be extended up to a maximum total of 180 calendar days within a calendar year.

23. In the case of aliens intending to carry out activities of a journalistic nature in order to cover a special event, journalists, reporters, camera operators, photographers or anyone else forming part of a reporting team and holding credentials to that effect may be issued with a permit for a period not exceeding the duration of the event to be covered, and this may be extended upon submission of written justification to DAS.

24. Aliens coming to provide training to public or private bodies, following presentation to DAS of a letter from the organization concerned accepting responsibility and explaining the reason for the alien's presence. This permit will be issued for a period of up to 30 calendar days and may be extended for up to a further 15 calendar days in the same calendar year.

25. The entry permit and leave to remain granted by the migration authority may be restricted or revoked, depending on the particular situation of each individual and his or her migration status in Colombia.

26. Transit permits valid for up to 72 hours may be granted to group passengers in transit from tourist cruise ships who call in at sea and river ports and re-embark upon the same vessel, provided the migration authority is supplied at least 72 hours in advance by the captain of the vessel or the maritime agency responsible with a list of the passengers

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<sup>6</sup> The Decree lays down provisions for visa issuance, monitoring of aliens and other migration issues.

and crew who will be disembarking, including details of each person's passport or other valid travel document and the duration of the visit.

27. This transit passenger permit does not require issuance of a visa and/or completion of a migration card by the passenger, nor does the passenger's passport or other valid travel document need to be annotated or stamped upon entry or departure.

28. This permit is also granted to group transit passengers from tourist liners who disembark at sea and river ports in order to make their way to another destination country via the same city's airport, and to passengers on international flights who land at the airport to embark on tourist liners from countries not requiring an entry visa, for such period of time as may be strictly necessary.

29. The migration authority may refuse entry and order the immediate return of the person concerned to the country of embarkation or origin or to a third country willing to admit them. However, this refusal must be based on the grounds laid down by law, which limit the right of entry to Colombia for those who:

(a) Fail to present a vaccination card or certificate when and in cases where the Colombian health authority requires it;

(b) Lack the financial means to subsist and carry out the activities declared, or fail to present a return ticket enabling them to leave Colombian territory, in the case of aliens with a visitor's visa or entry permit;

(c) Have a criminal record for trafficking in drugs or narcotics or related offences;

(d) Have court proceedings pending for offences carrying a prison term of two or more years in Colombia or elsewhere and/or have carried out actions or have a criminal record abroad that might compromise the security of the State or jeopardize social peace;

(e) Have been deported or expelled from the country, unless they have been granted a visa subsequent to this measure, or who seek to enter Colombian territory without having completed the term of the penalty stipulated in the administrative order;

(f) Have been extradited from the country, unless they can show they have been cleared of the offences they were charged with;

(g) Fail to present a visa when required;

(h) Are on the specialized files of the border police;

(i) Have no economic activity, profession, occupation, industry, trade or other legitimate means of earning a livelihood, or whose entry into the country is considered undesirable because of some other circumstance;

(j) Have a criminal record for migrant-, people- or organ-trafficking, child pornography and/or common offences;

(k) Attempt to enter the country with false documents or without the legally required documentation;

(l) Have carried out actions which, in the judgement of the migration authority, made them a threat to national security or social peace;

(m) There is provision for some flexibility in implementing a decision to refuse admission to or turn back aliens when this cannot be done immediately: the migration authority may detain them for up to 36 hours and hand them over, against an official order, to the transport company, which will be required to return them to their place of departure;



(n) The migration authority may limit or revoke an alien's permission to enter and remain in the country.

30. The right to leave Colombian territory, on the other hand, is unrestricted, in compliance with the freedom of movement provisions in the Colombian Constitution. Under Decree 4000 of 2004, however, people must present the following documents to the migration authorities as a prerequisite for leaving the country:

- (a) A current passport or other valid travel document or an identity document, as required;
- (b) A current visa or permit, as required;
- (c) An identity card in the case of Colombian nationals or a current alien's identity card in the case of aliens, when required;
- (d) A safe conduct pass in the cases established in Decree 4000.

31. In summary, with regard to the statistical data relating to the matters covered by article 8 of the Convention, on the right to depart freely from any State, including the State of origin, and to return to it, it should be noted that the Colombian State applies only those limitations that are established by law in accordance with article 24 of the Constitution.

32. Annex 1 gives details of migratory movements of aliens from and to Colombia between 2007 and February 2011, and of visas granted to aliens between 2007 and 2010.

## **2. Inter-institutional coordination and work with migration statistics**

33. Considering that information on international migration is the most difficult of all the components of the demographic dynamic to measure because of the lack of information sources capable of providing thorough and reliable records of population movements, the National Administrative Department of Statistics (DANE) has devoted most of its efforts in recent years to improving administrative records as a source of continuous information for the production of statistics on international migrants. In 2010, two important breakthroughs were achieved in pursuit of this goal.

34. In the first instance, an inter-administrative agreement was signed with the Administrative Department of Security (DAS) and formalized on 28 June 2010 with a view to "combining the efforts of DAS and DANE on data-sharing with a view to enhancing the production, analysis and dissemination of statistical information on migration records of mutual interest, within the framework of their institutional missions". This agreement has given DANE access to the anonymized microdatabase<sup>7</sup> of the DAS register of international arrivals and departures, which allows records to be identified without breaching the confidentiality of this information. As will be described later, these data are a source of valuable information for the production of international migration statistics.

35. Additionally, and in this same area, DANE is orienting its efforts as coordinator of the System of National Statistics (SEN) towards improving the quality of official statistics, meaning those included in the National Strategic Plan for Statistical Development (PENDES) that are produced by DANE and by other government bodies in the discharge of their institutional missions. Implementation of the SEN quality framework, which links up instruments and mechanisms whose combined effect is to improve the production of statistics, underpins this process. Within this framework of quality assurance for strategic

<sup>7</sup> The anonymized microdatabase is the database containing information on every international movement in and out of the country. In accordance with the provisions of article 45 of Decree 0643 and article 76 of Decree 4000 of 2004, which establish the confidentiality of this information, it excludes travellers' names and identifying documents.

statistical information, it is the mechanism used to assess the quality of the statistics produced and carry out comprehensive follow-up of the application of factors and instruments, contributing to the reliability and transparency of the system. This mechanism has been applied to the DAS register of international arrivals and departures, and the results have also been incorporated into the measures taken to pursue the object of the DAS-DANE inter-administrative agreement. The main stages in this process, those of documentation and evaluation, were implemented mainly during the second half of 2010.

36. As part of these two processes, DANE has carried out an evaluation based partly on implementation of the processes involved in compiling information from this register, partly on direct use of the microdatabase, and this has given rise to a number of recommendations that DAS is currently evaluating with a view to their implementation in its new technology platform. Some of the most salient aspects of the work done with DAS are:

(a) The DAS register is currently the only potential information source available to the country for carrying out regular migration studies. Although this register was not originally designed to collect statistical information on the dynamic of Colombian migration, it has yielded valuable data that no other instrument provides;

(b) To improve the quality of the information in this register, what is required from an operational standpoint is to improve, first, human resources by providing training in the importance of information and, second, the information capture software used in the register and the technology platform. DAS is currently implementing these actions;

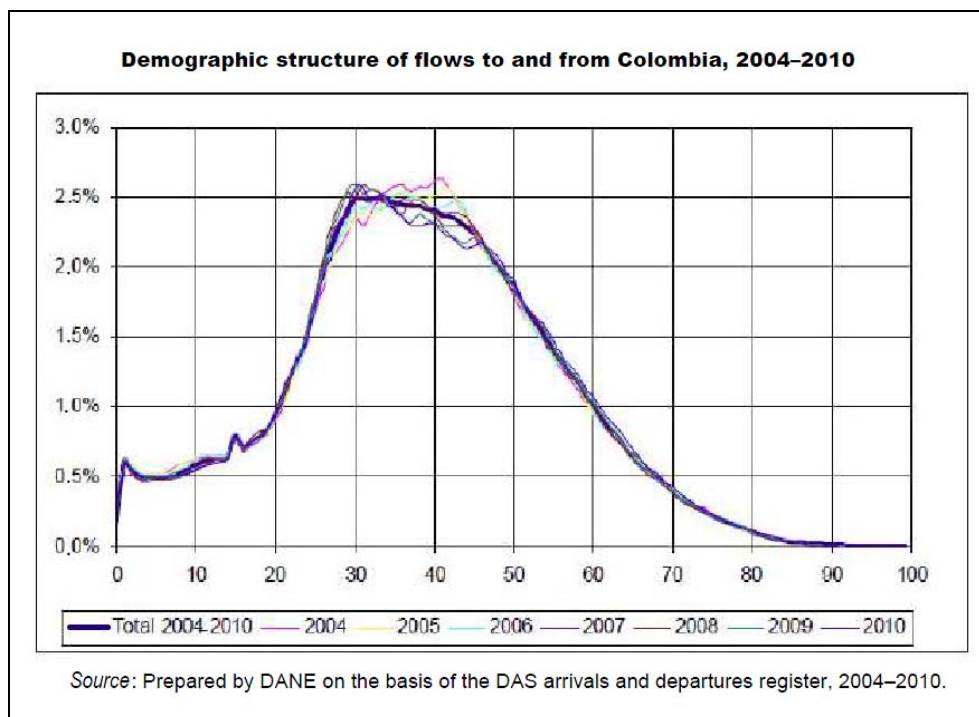
(c) From the methodological standpoint, there need to be changes in the design of the register so that concepts are standardized with those of international agencies. The alterations required chiefly concern variables that reflect migrants' human capital, such as occupation. This process would provide the basis for an initial approach to the issue of migrant workers. In addition, it is recommended that the education level variable be included, as this would allow the population concerned to be characterized more fully;

(d) Given that the information from all checkpoints is captured on the ground, it is recommended that validation rules be introduced to improve information quality in the variables applied.

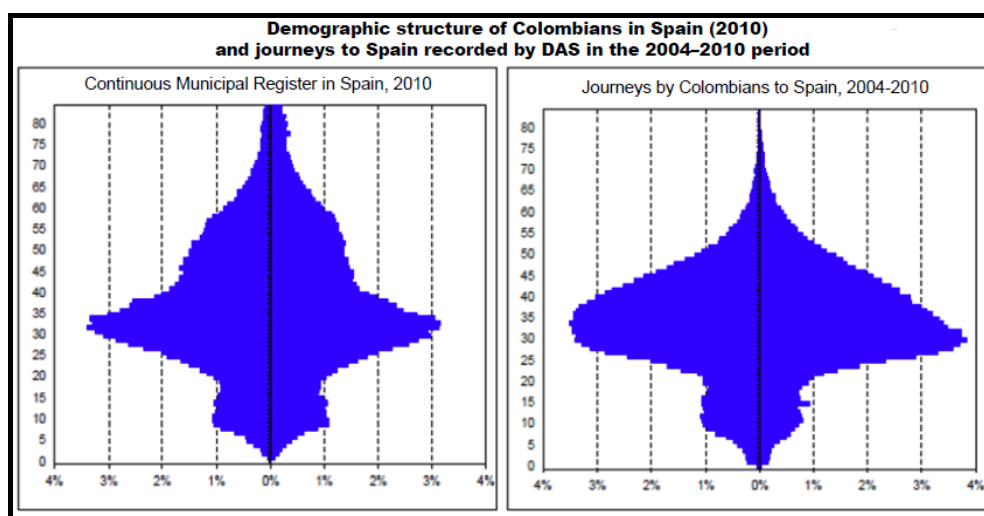
37. Notwithstanding the above, during 2011 DANE developed a methodology with assistance from an international expert to enable it to identify among all the travellers logged those who can be classified as international migrants on the basis of certain criteria. This exercise has been carried out on the information from the 2004–2010 period, and the results suggest that the structure of the register does allow for rough measurement of international migration, particularly in the light of three aspects:

(a) 88.9 per cent of journeys in the period were by air, and this provides better levels of coverage and quality for movements of this type;

(b) The demographic structure is consistent and matches the demographic parameters that would be expected for migrants. Demographic studies of migration have revealed that it is highly sex and age-selective, and the data in the DAS register are consistent with this;



(c) The figures for total journeys to Spain in the reference period closely match the profile of the Colombian-born population as recorded in the Spanish Continuous Municipal Register for January 2010.



Source: Prepared by DANE on the basis of the DAS arrivals and departures register, 2004–2010, and Spanish National Institute of Statistics (INE), register of population in Spain as of 1 January 2010.

38. According to the preliminary results of this exercise, and bearing in mind that the database is currently being cleaned up, there were just over 41.6 million movements during the 2004–2010 period, involving some 10.5 million people. Owing to the large volume of traffic accounted for by certain individuals, however, it was necessary to generate a sub-database including only individuals presenting up to 25 movements, with 98.6 per cent of travellers falling into this category. Matching up individuals' movements (arrivals and

departures) has revealed that 92.3 per cent of all those recorded in the database present consistent patterns of arrivals and departures to and from Colombia. This first database of individuals will be used to arrive at approximate figures for migration flows, initially for the study period and then continuously in real time, with country of residence, country of birth and time spent by each person outside Colombia being taken as the main variables.

39. DANE also plans to use other information sources (essentially the census data countries are currently producing from the censuses of the 2010 round, and indirect estimates) to update the figure for Colombians resident abroad. In 2005, this number was estimated at 3,378,345 using the new census information, estimates from indirect methodologies and the census reconciliation process.<sup>8</sup>

40. In the second place, CONPES document 3603 on comprehensive migration policy, approved on 24 August 2009, includes an action plan for improving information on international migration, in which DANE has two responsibilities:

(a) Providing technical assistance to help implement the pilot Survey of Colombians Resident Abroad (ECRE), which will be conducted by the Ministry of Foreign Affairs. The object of this pilot survey is to obtain sociodemographic information that can be used to characterize the Colombians recorded by the survey for Ministry policymaking purposes. The findings of this pilot study will allow the ECRE to be refined and its future application determined;

(b) With a view to enhancing migration statistics, DANE will design a working plan containing strategies for improving the production and analysis of information on this subject, with the involvement of Colombian and international experts.

41. To fulfil its first responsibility, during 2010 DANE provided technical support for the development of the questionnaire, designed Web software for the electronic form and carried out printing of forms, inputting of the paper forms and information processing for the generation of output tables, while the Ministry of Foreign Affairs, as the main user of the information, was involved in developing the form and, via its consulate in London, where the pilot was conducted, made all the logistical preparations for this exercise. It is also responsible for administering the information collected.

42. Implementation of the ECRE pilot took place in London from 10 September to 10 October 2010, as mentioned above. A DANE official spent two days in the city (8 and 9 September) and trained nine consular officials and 40 volunteers to process the paper form and handle the Web application, using the system designed by the Foreign Ministry. She was also involved in the first week of the field operation.

43. Once this exercise had been completed, the results of the pilot were analysed and the final report prepared. Broadly, the most important results of this exercise were as follows:

(a) The object of the pilot was to analyse the publicization strategy and the use of the Web application and to test the paper form, the user submission strategy, the collection operation and the training system. Because this was the first time an exercise of this nature had been carried out, the idea was also to assess the advantages and limitations of doing it in a foreign country;

(b) Although this was a pilot study, the information gathered cannot be used to carry out a migration analysis. The contents of the form reflected the information needs defined in the strategic principles of the Colombia Unites Us (*Colombia Nos Une*) programme operated by the Department of Migration and Consular Affairs and Service to Citizens of the Ministry of Foreign Affairs;

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<sup>8</sup> DANE, 2008, Estimación de la Migración 1973–2005.

(c) A total of 1,890 people answered the survey, of whom 1,759 were Colombian;

(d) 76 per cent of respondents used the paper form. The fact that more surveys were completed on paper than on the Web may reveal an unwillingness to provide identifying information among those participating in the pilot, since whereas the respondent's name, identity card number and postal code fields had to be completed in the web page application in order for the form to be processed, on the paper form they could simply be left blank;

(e) Recommendations were made as to the design of the form. These related to the delimitation of the universes to be studied, question options and phrasing, among other things;

(f) Raising awareness is vital for studies of this type, which means that it must be done well in advance and involve every kind of strategy that might contribute to the large-scale dissemination of information among Colombians living in the country where the survey is to be applied.

44. At an official meeting on 9 August 2011, the technical group of DANE presented its results and recommendations for future applications of this exercise, which are detailed in the final report submitted by the head of the Colombia Unites Us programme and her team. The project was also officially closed at this meeting.

45. Where the second responsibility is concerned, lastly, at a meeting on 19 August 2010 of the Inter-institutional Committee on Migration Statistics, which groups together the official bodies and institutions dealing with migration issues, DANE presented the three main lines of action on which it is working to enhance the production and analysis of international migration statistics. These lines of action are: (a) technical enhancement, (b) inter-institutional coordination and (c) international integration. Technical enhancement refers to the creation of human capital among the members of the groups of specialists responsible for this issue within organizations. Inter-institutional coordination addresses the need to re-engage organizations that are producers or users of migration data and are part of the Inter-institutional Committee on Migration Statistics. International integration, lastly, means coordination, principally, with institutes of statistics in countries that receive Colombian migrants, so that information on each country's nationals can be shared and forums such as the Andean Community meetings of government experts on migration statistics taken advantage of.

### **3. International migrants in the Colombian labour market**

46. No exact figures are currently available for foreign citizens in the Colombian labour market. According to the Integrated Contribution Payment System (PILA), as of February 2011 there were 17,710 holders of identity cards for aliens, i.e., foreign migrants, paying into the General Social Security System.

47. In 2010, a study entitled *Documento Técnico sobre la Caracterización de Población Migrante Extranjera en el Mercado Laboral Colombiano* was prepared following analysis of the information obtained from administrative records of applications for certificates of proportionality (certifying the proportion of Colombian to foreign workers employed by a firm) submitted by 3,015 employers wishing to employ foreign workers in 2009 and leading to the issuing of 9,508 certificates.

48. The document provides historical and legal information on international migration into Colombia, the mechanisms for keeping track of foreigners in the country, the proportion between Colombian and foreign workers, a rough characterization of migrant labour in the Colombian labour market, and conclusions and recommendations.

49. Likewise, because of the work done by the Ministry of Social Protection in monitoring proportionality, data are available on the applications submitted by firms and the certificates of proportionality issued in response to work visa applications made to the Ministry of Foreign Affairs in 2010, both on paper and online, which increased in number but otherwise presented much the same characteristics as in 2009.

50. In 2010, a total of 12,120 certificates of proportionality were issued to citizens of over 100 nationalities, most of them from the main trading partners of Colombia and from neighbouring countries, in this order: Bolivarian Republic of Venezuela, United States, Peru, Argentina, Ecuador, Brazil and Spain.

#### **Certificates of proportionality issued in 2009 and 2010**

<i>Year</i>	<i>Total certificates</i>
2009	9 508
2010	12 120
<b>Total</b>	<b>21 628</b>

*Source:* Labour Promotion Department, Ministry of Social Protection.

51. Applications were made and certification received by firms or employers recruiting citizens of these countries in administrative and managerial roles and positions of trust such as presidents, vice-presidents, managers, directors, supervisors and section heads, in different sectors, with the largest numbers being in the following economic activities:

- (a) Mining and quarrying (oil engineers, drillers and geologists);
- (b) Manufacturing;
- (c) Wholesale and retail commerce;
- (d) Transport and communications.

52. By gender, men accounted for over 80 per cent of those receiving certificates.

53. It is important to note that a large percentage of migrant citizens work in positions that do not entail a relationship of employment with the firm to which they are providing services in Colombia and receive no wage or remuneration in the country, but require a temporary work visa anyway and accordingly receive equal treatment.

54. Act 1429 of 2010 establishing the law on formalization and generation of employment repealed the rule of proportionality between Colombian and foreign workers and the obligation to submit a certificate of proportionality as a requirement for applying for a work visa from the Ministry of Foreign Affairs.

55. With the abolition of the quota or limitation (proportionality) on the recruitment of aliens to work in the country, which was seen as restricting the rights of migrant workers, the issuance of work visas has been expedited and it has become easier for migrants to participate in the Colombian labour market, since for quota purposes they are treated in the same way as nationals.

56. The Government has no statistical information available on the number, gender or nationality of aliens who are frontier and seasonal workers.

57. As regards migrant children, they are given equal treatment with Colombian children, and the Ministry of Social Protection has never issued work permits for migrant juveniles to work in the country. Colombian legislation regulates the work of juveniles without distinction

(certainly not for reasons of nationality), chiefly as regards working hours, non-permitted jobs, night work, and the right to a compulsory education, among other things.

58. Because children have the right to a compulsory education, the law makes the juvenile's parents or guardians responsible for ensuring they attend an educational establishment.

59. The Ministry of Social Protection issues work permits for juveniles subject to the requirements being met. No work permits have been issued for juvenile migrant aliens to work in Colombia.

60. Among the investment projects registered with and receiving funding from the National Planning Department (DNP) from 2012 to 2014, the intention is to implement a project called "Formulation and implementation of a comprehensive labour migration policy and its management methodology". The aim of this methodology will be to obtain statistical information and indicators enabling the labour migration dynamic to be analysed and monitored by implementing actions and designing and validating instruments that facilitate the management of international migration both at the borders and within the country.

**B. Data and statistics on the number of unaccompanied or separated migrant children within the territory of the State party**

61. The Government currently has no information on this point.

**C. Steps that have been taken to harmonize the national migration laws with the Convention, including whether the State party has plans to withdraw its reservations to the Convention, if any**

62. As was mentioned in the initial report, upon signing the Convention the Colombian State entered a reservation whereby, among other things, it retains the right to promulgate taxation, foreign-exchange and monetary regulations establishing equality of treatment of migrant workers and their families with that of nationals in respect of the import and export of personal and household effects and the transfer of earnings and savings abroad. The decrees cited in paragraph 75 of the initial report, which states that Decree No. 2057 of 1987 and Decree No. 742 of 1990 "provide that the personal effects of travellers, irrespective of their origin or interest in visiting Colombia, as well as the tools required for the exercise of their profession, trade or occupation, shall be exempt from taxes upon entry into the country", are consistent with this reservation which, in turn, is consistent with the object and end of the Convention.

63. Likewise, current law in Colombia guarantees migrant workers' right to transfer their income and savings, but does not establish any preferential treatment.

**D. Any signature, accession or ratification of human rights treaties or international instruments relevant for the implementation of the present Convention; in particular, any steps taken towards ratification of ILO Conventions No. 97 (1949) on Migration for Employment and No. 143 (1975) on Migrant Workers**

64. On 10 May 2011, the Colombian State deposited with the Secretary-General of the United Nations the instrument ratifying the Convention on the Rights of Persons with Disabilities, whose article 18, "Liberty of movement and nationality", recognizes the right

of persons with disabilities to liberty of movement, to freedom to choose their place of residence and to a nationality, on an equal basis with others living in the same territory. This instrument, and its application, thus strengthens the protection of migrant workers with some type of disability.

65. Regarding ratification of ILO Conventions No.97 (1949) on Migration for Employment and No. 143 (1975) on Migrant Workers, the Colombian Government, acting through the Ministry of Social Protection, has commenced preparatory work to explain the rationale for ratification with a view to submitting its proposal for accession to these two instruments.

**E. Any court decisions related to the enjoyment by migrants and members of their families of the rights contained in the Convention**

66. There is no information available on this point.

**F. Any change in the legislation affecting the implementation of the Convention**

67. For the purposes of applying the Convention, it is important to mention that the Colombian Government recently passed Act 1465 of 29 June 2011 creating the National Migration System (SNM) and enacting rules to protect Colombians abroad. This is a legal instrument that, as its article 2 establishes, will “assist the national Government in the design and implementation of public policies, plans, programmes, projects and other actions to strengthen ties between the State and Colombian communities abroad”. Notwithstanding this, one of the principles of the SNM, as stated in article 3, point 5, is the pursuit of “social integration of aliens in Colombia through cross-cutting policies aimed at all citizens and based on tolerance, equality and non-discrimination, following principles of reciprocity”.

**G. Specific procedures that have been put in place in order to deal with mixed migratory flows, in particular to establish the special protection needs of asylum-seekers and victims of trafficking; in this context, please indicate whether national legislation provides for the application of the Convention to refugees and/or stateless persons**

68. Decree 4503 regulating the matter of refugees in Colombia was enacted on 19 November 2009.<sup>9</sup> By amending the previous rules, this sought to bring Colombian legislation into line with the laws applied in almost all the countries of Latin America, especially those of the Southern Cone. The new decree amends the definition of a refugee to incorporate that given in the 1984 Cartagena Declaration on Refugees, recognizing as refugees people who “have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order”. This has expanded the scope of the international protection provided by the Colombian State, while the new legislation has also been geared to the situations in the main countries of origin of asylum-seekers in Colombia. These include Somalia, Sri Lanka, Ethiopia and Eritrea, countries where the devastation of internal wars has created severe humanitarian crises

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<sup>9</sup> It is important to highlight the inter-institutional efforts made to give better-targeted treatment to refugees and asylum-seekers in the country. One of the main goals is to improve the knowledge of migration officials carrying out migration control functions throughout the country.



requiring a response from the international community to mitigate the suffering of those forced to flee their countries because of these episodes of human rights violations.

69. Decree 4503 of 2009 represents a major step forward in the protection of more vulnerable population groups. Once an applicant is identified as being vulnerable or having special needs, he or she will be given priority in reception, registration and case analysis procedures. The vulnerable categories specified by the new decree include: (a) victims of torture or persons experiencing trauma; (b) women with special needs; (c) juveniles; (d) older adults; (e) people with disabilities; (f) people requiring medical attention. Regarding letter (b), it is worth highlighting the situation of women of Muslim origin, who account for a large percentage of female applicants. To forestall culture shocks or breaches of the traditions inculcated into this social group as regards dealings with men, the new decree provides that female applicants who so wish are entitled to be interviewed by duly trained female officials and interpreters in an environment of sensitivity to gender differences. In the case of children and adolescents who are still minors, the Colombian Institute of Family Welfare (ICBF) will be asked to participate in order to ensure an appropriate process that respects their rights and is conducted in an atmosphere of sensitivity to their special needs and degree of maturity.

70. Unfortunately, there are cases where applications are manifestly unfounded and clearly abusive, i.e., where people seek to avoid migratory or administrative penalties by applying for refugee status with a view to subverting these. This being so, the decree has been considerably improved by the inclusion of a fast-track procedure for recognizing abusive applications so that it can be established, via a fair and efficient process, which people are really in need of international protection and which only claim to be in order not to be identified as economic migrants. The new fast-track procedure ensures that a response can be given to these cases in about a week so that the appropriate measures can be promptly taken, while at the same time safeguarding the important international institution of asylum from situations that undermine its credibility.

71. Where specific procedures for providing special protection to the victims of human trafficking are concerned, as was argued in the initial report on the application by the Colombian State of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, instruments such as article 17 of the Constitution and Act 800 of 2003 approving the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children have been used to create a legal, judicial and political framework to combat criminal organizations engaged in the trafficking of human beings.

72. The aim was to use this Protocol to deal with all the aspects, categories and aims involved in human trafficking, create measures to prevent this crime, punish traffickers and uphold the rights of victims, paying special attention to women and children.

73. In its ruling C-962 of 2003, in which it found the law approving these instruments to be constitutional, the Constitutional Court stated, among other things, that the provisions of the Protocol were to be understood as being subject to interpretation in conjunction with the Convention. This indicates that when there is any gap in the Protocol or doubt about its application, the Convention must be turned to for clarification, and vice-versa. Likewise, the Court emphasized that the crimes defined in the Protocol were to be understood as being defined for the Convention too and that the measures provided for therein could be used to combat the crime of human trafficking, emphasizing its character as an additional Protocol and, lastly, calling upon the legislature to adapt domestic criminal law to international standards and the model definitions of crimes contained in the Protocol and Convention, including the crime of human trafficking.

74. Subsequently, in light of the fact that Colombia has the third-largest number of victims of human trafficking of any country in the world, according to the International Organization for Migration (IOM), the Ministry of the Interior and Justice (MIJ) sponsored Act 985 of 2005 adopting measures against human trafficking and provisions for assisting and protecting its victims, article 3 of which amends article 188A of the Penal Code, defining the offence of trafficking in persons as follows: “Anyone who detains, transports, harbours or receives a person within the national territory or abroad for the purpose of exploitation shall be liable to a term of imprisonment of thirteen (13) to twenty-three (23) years and a fine of eight hundred (800) to one thousand, five hundred (1,500) times the current minimum statutory monthly wage.”

75. “For the purposes of this article, exploitation is understood to mean obtaining economic gain or any other benefit for oneself or for another person by exploiting the prostitution of another person or other forms of sexual exploitation, forced labour or services, slavery or practices akin to slavery, servitude, exploitation of another person’s mendicancy, marital servitude, extraction of organs, sex tourism or other forms of exploitation.”

76. The offence thus defined covers the whole cycle or operation of human trafficking, so that anyone detaining, transporting, harbouring or receiving a human being is now penalized, as each of these acts is an offence in itself. For legislative purposes, likewise, it is emphasized that the victim’s consent to being exploited in any of the ways defined in article 188A does not exonerate the trafficker from criminal liability.

77. It is important to note that Act 985 of 2005 does not concern itself solely with the punishment of human trafficking but also deals with aspects relating to prevention, assistance and protection for victims and possible victims of this crime. It also provided for the creation of the Inter-institutional Committee to Combat Trafficking in Persons, which is a consultative body for the national Government on trafficking in persons and the coordinator of actions taken by the State to combat this crime.

78. The Inter-institutional Committee is made up of members of 14 State bodies:

- “1. The Minister for the Interior and Justice or his or her representative, who will chair the Committee.
2. The Minister for Foreign Affairs or the Director of Consular Affairs and Colombian Communities Abroad, or his or her representative.
3. The Minister for Social Protection or his or her representative.
4. The Minister for Education or his or her representative.
5. The Director-General of the Administrative Department of Security or his or her representative.
6. The Director-General of the National Police or his or her representative.
7. The Director of Public Prosecutions or his or her representative.
8. The Attorney General or his or her representative.
9. The Ombudsman or his or her representative.
10. The Deputy Director of the Interpol Bureau in Colombia or his or her representative.
11. The Director-General of the Colombian Institute of Family Welfare or his or her representative.

12. The Presidential Advisor on Equity for Women or his or her representative.

13. The Director of Fondelibertad or his or her representative.

14. The Director-General of the Special Administrative Unit for Financial Information and Analysis or his or her representative.”<sup>10</sup>

79. The passing of Act 985 of 2005 has enhanced cooperation among the institutions responsible for combating human trafficking in the country. The Inter-institutional Committee is a dynamic body whose work is underpinned by the commitment of the organizations that are its members. Since the Act was adopted there has been an improvement in the efficiency of these organizations, which have successfully implemented it through a process of feedback. Thanks to all these legislative advances in the effort to combat this offence, the Colombian State is now internationally recognized as a country that treats human trafficking as a crime while at the same time providing a range of services to protect its victims.

80. Among the legally mandated obligations of the Inter-institutional Committee was the requirement to formulate and implement the 2007–2012 Comprehensive National Strategy to Combat Trafficking in Persons (the National Strategy), which was adopted by Decree 4786 of 19 December 2008.

81. The National Strategy lays down four main areas of action, representing the main focuses of efforts to combat this phenomenon:

(a) Prevention: preventing human trafficking by means of programmes, projects and measures undertaken by the public authorities jointly with organizations from civil society and the private sector generally and international organizations;

(b) Assistance and protection: providing comprehensive, expert assistance and protection for victims of human trafficking by developing comprehensive protection mechanisms as part of the administrative, investigative and judicial machinery;

(c) International cooperation: strengthening international cooperation mechanisms at the bilateral, regional and multilateral levels to optimize the comprehensive effort against human trafficking;

(d) Investigation and prosecution: strengthening the State organizations responsible for investigating and bringing to trial the crime of human trafficking, making them more effective and efficient at pursuing and punishing offenders.

82. Although the National Strategy was conceived by a central authority (the Inter-institutional Committee) and prescribes general principles to be applied up and down the country, it will be implemented in a basically decentralized way by the regional committees responsible for combating trafficking in persons, which will be free to make the requisite adjustments in the light of the specific characteristics of the local area and population.

83. With a view to prioritizing the most important measures to be taken to meet the specific goals of the National Strategy and commit institutional resources and efforts to its implementation, each year the Committee draws up an action plan that is used to map out actions and activities of specific and general competence in accordance with the four areas of action laid down by the National Strategy, simultaneously determining the origin and amount of resources, the bodies responsible for implementation and the indicators to be used for follow-up and evaluation of each project over time.

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<sup>10</sup> Act 985 of 2005, Chapter VI – Inter-institutional Committee, article 14.

84. In 2006, under the auspices of Cooperation Agreement FS/COL/03/R52 between the Ministry of the Interior and Justice and the United Nations Office on Drugs and Crime (UNODC) in Colombia, and as part of the Project to Combat Trafficking in Persons, preliminary planning was carried out for the creation of a human trafficking operations centre (COAT). This centre would provide an ideal instrument for the analysis of institutional responses to the crime of human trafficking, giving the authorities the opportunity to improve both inter-institutional coordination and the interaction between institutions and people who are vulnerable or have fallen victim to this crime.

85. The Inter-institutional Committee to Combat Trafficking in Persons approved the creation of COAT on 22 March 2007, as set out in Record No. 008 of 2007. COAT began operating on 27 June 2008. Its mission in the effort against human trafficking would be both difficult and important, as its purpose was to see that the investigation, pursuit and prosecution of criminals involved in the offence of human trafficking, and likewise victim assistance and protection programmes, were coordinated in such a way that the efforts of different institutions in different areas became complementary rather than duplicative or conflicting.

86. Thus, according to figures reported by COAT, which is coordinated and administered by the Ministry of the Interior and Justice, 400 notifications of alleged human trafficking were received during 2008, 2009 and 2010 (Annex 2).

87. It became necessary to classify notifications into three major groups, depending on the nature of the information received and produced by COAT:

(a) Affected persons: specific victims, most of them individually identified, whose rights have been affected;

(b) General complaints: these are alleged cases of human trafficking that affect communities, relating however not to specific individuals but to groups of people at risk;

(c) Information requests: these are queries received by COAT with regard to a possible situation of human trafficking in which, however, no-one's rights have been violated. In the great majority of cases it is prevention work that is required, e.g., the legality of a job offer.

88. In this period, 179 of the alleged cases reported concerned external trafficking and 28 internal trafficking.

## **1. 2010 period**

89. In the course of 2010, 136 reports of alleged cases of human trafficking were received, involving 53 affected persons, 16 general complaints and 67 information requests. Of all the alleged cases reported, 106 concerned external trafficking and 30 internal trafficking.

90. The Colombian Government has taken other significant measures and actions in its determination to combat human trafficking. One example is the passing of Ministry of the Interior and Justice Resolution No. 3598 of 2009 creating the internal working group on human trafficking and establishing the functions of this body. Thus, working within its sphere of competence, the Ministry made the following progress with implementation of Act 985 of 2005 and the National Strategy:

### **a. Prevention area**

91. The IOM and the Ministry of the Interior and Justice carried out a prevention campaign via the mass media and alternative outlets with the title "Con la Trata de Personas no hay trato" ("No truck with human trafficking"), dealing with the four types of human

trafficking that are most prevalent in Colombia: marital servitude, forced mendicancy, sexual exploitation and forced labour.

92. The prevention campaign has reference material for testimonials and press advertisements and material for radio, television, the Internet, street furniture, posters and advertising on vehicles operating on the Transmilenio public transport system. It was put out over television and radio and via alternative media such as Eucol for bus stops and Transpot and Publi-impresos for buses in the Bogotá mass transit system, Transmilenio.

93. As an indication of its commitment to preventing and combating human trafficking, on 3 March 2010 the Ministry of the Interior and Justice, UNODC and the 2010 Colombian version of the Elite Model Look competition, managed in the country by Portfolio International, decided to make the alliance public to promote a clear message of awareness and prevention among the young people and parents attending the national events organized by the competition.

94. One of the most common methods used by perpetrators of this crime to attract victims are sham offers of modelling work in the major cities and abroad, with promises that usually end in deception and different forms of exploitation, including exploitation for prostitution. Accordingly, the opportunity to communicate this message should reduce the occurrence of cases of human trafficking under these circumstances in future. The agreement was timed to coincide with the competition so that women enrolling for it in the cities where it was held and their parents would receive information on how to identify possible cases of human trafficking, how to reduce vulnerability to this crime, and the mechanisms that exist in Colombia and internationally for preventing and reporting it.

95. Results: The casting round took place between May and August 2010 in the cities of Montería, Barranquilla, Bucaramanga, Medellín, Bogotá, Cartagena and Cali. In this selection process, 550 competition participants and 176 parents were apprised of the dangers, making a total of 726 people. Participants received a bracelet reading “Yo lucho contra la trata” (“I am trying to stop trafficking”), which symbolizes the wearer’s commitment to act as an agent for the prevention of this crime.

96. With a view to publicizing the issue of human trafficking both within Colombia and from Colombia to other countries, and to promote information on the dangers of international migration under conditions of vulnerability, risk, irregularity or illegality, public information workshops for young people were held in the cities of Cali and Pereira.

97. Seven information and advice sessions were held, involving 506 young participants:

- (a) Pereira: 220 young people advised. Ciudadela Barrio Cuba;
- (b) Cali: 64 young people advised. Distrito Agua Blanca Cali;
- (c) Medellín: 37 young people advised;
- (d) Cúcuta: 56 young people advised;
- (e) Leticia: 31 young people advised;
- (f) Buenaventura: 42 young people advised;
- (g) Cartagena: 56 young people advised.

98. With the idea of raising awareness among the staff of beauty salons and parlours and engaging them as agents in the prevention of the crime of human trafficking through early detection and referral of cases, distribution of information material and awareness-raising among users of these establishments, human trafficking information and advice events were designed and implemented for beauty salon staff.

99. Results: four information and advice events were held, attended by 3,100 staff from beauty salons and parlours:

(a) Medellín: 1,200 people were provided with basic information and material for distribution on signs that can lead to early detection of cases;

(b) Pereira: 600 people were provided with basic information and material for distribution on signs that can lead to early detection of cases;

(c) Pasto: 600 people were provided with basic information and material for distribution on signs that can lead to early detection of cases;

(d) Cali: 700 people were provided with basic information and material for distribution on signs that can lead to early detection of cases.

100. Organized crime networks around the world have taken advantage of the modelling and beauty circuits to initiate a chain of crime that begins with tempting offers of catwalk and photography work in large cities in Colombia and abroad and often ends with different forms of exploitation. The authorities have succeeded in identifying a number of cases of human trafficking associated with modelling, involving front agencies and promises of large sums of money as a strategy to persuade young women, and even their parents, to accept offers that lead to trafficking for the purposes of sexual exploitation and servitude, including marital servitude.

101. The video and song *¿Adónde vas María? (Where Are You Going, María?)* were launched to meet the need for a human trafficking prevention tool aimed at young people aged between 14 and 26 in particular.

#### *Results*

102. The launch event for the video and song *¿Adónde vas María?* was held in Bogotá before an audience of 400.

103. According to the descriptive exploratory national study on trafficking in persons published in 2009 by the National University within the framework of a cooperation agreement signed between the Ministry of the Interior and Justice and the UNODC, population movements caused by public order problems increase the vulnerability of trafficking victims when these become involved with offers that end in forced labour or services, servitude, mendicancy and exploitation for prostitution. Thus, the neediness of girls and women when forced to move leads them to accept proposals of this kind that are linked to human trafficking.

104. Accordingly, workshops were designed to provide information and advice on the crime of human trafficking involving displaced women and mothers heading households. The objective of the programme was to cover the most sensitive areas, combating this crime by providing tools for its prevention, identification and reporting.

#### *Results*

105. A total of 10 information and awareness events were held, with advice being given to 425 displaced women and mothers heading households:

(a) Santander: 40 women advised;

(b) Bolívar: 50 women advised;

(c) Risaralda: 35 women advised;

(d) Valle del Cauca: 22 women advised;

(e) Guaviare: 47 women advised;

- (f) Antioquia: 74 women advised;
- (g) Norte de Santander: 39 women advised;
- (h) Amazonas: 45 women advised;
- (i) Buenaventura: 35 women advised;
- (j) Bolívar: 38 women advised.

**b. Assistance and protection area**

106. In accordance with the provisions of article 7 of Act 985 of 2005, the Colombian State is required to design immediate and medium-term programmes of assistance to aid the physical, psychological and social recovery of victims of human trafficking. With a view to providing appropriate assistance, work is under way on a draft Assistance Decree whose aim is to establish the responsibility of each State body for programmes, projects and services it is required to provide within its sphere of competence. This will ensure that the system of assistance provided for by the Act is appropriately and effectively implemented.

107. The Assistance and Protection Subcommittee, created by resolution A of 30 June 2005 of the Inter-institutional Committee to Combat Trafficking in Women and Children (now the Inter-institutional Committee to Combat Trafficking in Persons) and with a membership that includes the Ministry of Foreign Affairs, the Ministry of Social Protection, the ICBF, the Presidential Council for Women's Equity (ACPEM), the Office of the Ombudsman and the Office of the Attorney General, coordinated by the Ministry of the Interior and Justice and with technical assistance from the IOM and the UNODC, designed and implemented the Routes of Assistance programme for repatriated victims of human trafficking and the Route of Assistance for victims of trafficking within the country.

108. To deal with the special circumstances that arise at the regional level and in the context of public policy decentralization, there have been pilot exercises in constructing departmental routes of assistance for victims of human trafficking, establishing the procedure departments must follow when they have information about a victim, the responsibilities of each service given the institutional resources available at the departmental level, and measures to coordinate and follow up the services provided.

**c. International cooperation area**

109. In accordance with the global initiative against human trafficking to which the Colombian State is committed, the Ministry of the Interior and Justice has taken a number of opportunities to share its experience with authorities in other countries and Colombian and international organizations, while also seeking to learn from other successful experiences in the effort to combat this crime.

110. On 24 and 25 September 2009, a binational meeting was held between Colombia and Panama to share experiences in the effort against human trafficking. This meeting was attended by a delegation of national authorities responsible for the issue of human trafficking in Panama and by the members of the Inter-institutional Committee to Combat Trafficking in Persons of Colombia. The meeting covered subjects such as international legislation, the national legislation of Colombia and Panama, cases of human trafficking, routes, recommendations and some possible cooperation agreements.

111. Likewise, the Chile-Colombia Bilateral Meeting "Trafficking in persons: coordinated responses by the State and international cooperation" was held on 6 and 7 September 2010. The meeting was coordinated by the Ministry of the Interior and Justice and the Ministry of Foreign Affairs with the support of the UNODC and IOM. The workshop comprehensively addressed every aspect of legislation against human trafficking, covering everything from

prevention of the crime and protection and assistance for victims to the punishment of perpetrators, in the light of the progress and experience of each country.

112. As part of the Colombia-Honduras plan of action on organized crime and terrorism, a binational event entitled “Trafficking in persons: coordinated responses by the State and international cooperation” was held from 15 to 17 December 2010 in Tegucigalpa to share experiences.

**d. Investigation and prosecution area**

113. Until a few years ago, one of the most serious impediments to meeting the needs of victims and prosecuting criminals for human trafficking was a lack of knowledge about the nature of the crime on the part of the police and judicial authorities. For this reason, the Ministry of the Interior and Justice has recognized the need to provide suitable training to officials involved in the effort against human trafficking as a key element in the investigation and prosecution area and in the victim protection and assistance area defined in the National Strategy.

114. The Inter-institutional Committee to Combat Trafficking in Persons recognizes the need to enhance the technical and operational capacity of the State institutions involved in pursuing and punishing this crime. Thus, priority is given in the National Strategy to strengthening the work of investigative and judicial police agencies and enhancing judicial procedures to deal efficiently and effectively with the different forms of human trafficking.

115. Accordingly, as part of a cooperation agreement signed with the UNODC, a specialized training process was designed for officials responsible for this work at the territorial level, involving active participation in departmental training courses designed to provide practical tools to enable them to identify and effectively prosecute the crime of human trafficking and help them act against it in the light of current Colombian and international law.

116. The workshops referred to are a specialized training facility for local officials whose sphere of competence includes prevention, assistance, investigation and prosecution of the crime of human trafficking at the regional offices of the Public Prosecution Service, the ICBF, the Administrative Department of Security (DAS), the National Police, the Office of the Ombudsman and the Office of the Attorney General, officials in the judiciary and officials in the local government concerned. During the reporting period, a training programme based on special protocols for prosecuting cases of human trafficking using the simulated trial technique was implemented. Using this methodology, 12 training events were held in the departments of Caldas, Bolívar, Magdalena, Nariño, Risaralda, Cundinamarca, Amazonas, Meta, Santander, Córdoba, Norte de Santander and Antioquia, with a total of 518 people receiving training and certification.

**2. Decentralization of human trafficking policy**

117. In application of article 14, paragraph 2, of Act 985 of 2005, which establishes that “the Committee will provide for the creation of departmental and/or municipal regional committees to combat trafficking in persons”, and considering that in Colombia there are departments and municipalities whose geographical, social and economic characteristics make them especially troubled, or which feature alternatively as victims’ places of origin, transit or destination, or all three, there is a need to adapt the areas of action laid down in the National Strategy to the geographical and social peculiarities of each region.

118. Accordingly, departmental or municipal regional committees were created with the support of international cooperation agencies. These are chaired by the local governors or mayors and perform a role of inter-institutional linkage and coordination with the object of



creating local ties so that the effort against this crime is strengthened by a local approach and local action.

119. In addition, the decentralization process that has been pursued in Colombia for some years is intended not only to make the administrative function of the State more effective but also, and just as importantly, to recognize the ability of a local community to take decisions about local affairs that affect it and to which it is closest.

120. The Ministry of the Interior and Justice has provided guidance to regional authorities on the creation of departmental committees to combat trafficking in persons. Thus, 32 committees have now been created in the 32 departments of which Colombia is composed. (See annex 3 for the decrees creating the committees).

**H. Steps taken to ensure that migrant children who are detained, including for violations of provisions relating to migration, are held separately from other adults and whether specific procedures are in place to determine the age of juvenile migrants; data on the number of migrant children detained**

121. On this point, it is important to note that Colombia does not engage in arbitrary imprisonment or detention of aliens (women, men or children),<sup>11</sup> since all actions taken are properly regulated and any violations result in criminal, administrative and disciplinary sanctions for the officials responsible.

122. Where juvenile justice is concerned, the Children and Adolescents Code (Act 1098 of 2006) fully incorporates the recommendations of the Committee on the Rights of the Child, meaning the requirement for adolescents to be kept apart from adults, regardless of nationality, during proceedings and when committed to custody. This being so, article 162 provides that adolescents committed to custody, wherever this is appropriate, must be held at specialized establishments run under Family Welfare System programmes and be kept apart from adults at all times.

123. The System of Adolescent Criminal Liability (SRPA) complies with these principles. In this respect, Colombia has accepted:

(a) The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) (General Assembly Resolution 40/33, annex);

(b) The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (Resolution 45/113, annex);

(c) The United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) (Resolution 45/112, annex).

124. Concerning the way the ages of children and adolescents who break the criminal law are determined, article 149 of the Children and Adolescents Code provides that when there is any doubt about an adolescent's age, and while the competent expert authority is determining this, the presumption must be that he or she is under 18. Whenever there is any doubt, the lower age is assumed.

125. In compliance with the recommendations made by the Inter-American System of Human Rights regarding the need to have a system of detention for migration offences that

<sup>11</sup> In all administrative and judicial proceedings, the Administrative Department of Security (DAS), as the national migration authority, seeks to protect juveniles by placing them in the charge of the Juvenile Police or the Colombian Institute of Family Welfare, in accordance with the provisions of Act 1098 of 2006 (Children and Adolescents Code). At no time are detention measures taken.

is administrative in nature and keeps those detained for migration violations strictly segregated from those detained on criminal charges, the first thing to note is that in Colombia the Alien Affairs Branch of the migration authority, the Administrative Department of Security (DAS), carries out the administrative procedure with guarantees of due process and oversight.

126. Secondly, migration law provides for administrative detention as a mechanism for implementing deportation or expulsion measures to which a foreign citizen is subject. This arrangement is regulated by the migration provisions contained in Decree 4000 of 30 November 2004 and is used for exceptional cases. Thus, article 109 provides: “Aliens may be taken by the migration authority at any time to the facilities of the Administrative Department of Security, when it is necessary to check their identity and/or residence status in Colombia or when administrative proceedings have been instituted against them and they are required for these.”

127. Any alien who has become subject to deportation or expulsion may be held in preventive detention for up to 36 hours and/or be subjected to monitoring or custody by the migration authorities until the measure is implemented.

128. On this subject, it should be explained that migrant workers and/or aliens against whom a deportation order is being enforced are in all cases provided with a safe conduct pass to leave the country that is valid for 30 days, and they can comply with the order at any time during this period. The same procedure applies in most cases where expulsion is ordered.

129. In respect of the power referred to, it should be noted that the administration regulates the latitude allowed in terms of the time period and conditions: a maximum of 36 hours’ detention, and only in cases where aliens are to be deported or expelled from the country. In other words, a prior administrative procedure is required to check migration status, leading to application of the deportation or expulsion measure, and it is therefore not feasible in Colombia to detain migrant workers who do not have a deportation or expulsion order outstanding against them. Thus, Colombia is a leader in preferential treatment for migrant workers and their families as regards the freedom of action and guarantees available to the State and enjoyed by the alien.

130. Similarly, the checks carried out by the State are duly regulated by the legislation referred to. It should be explained that administrative actions over any breach of migration law do not involve detention; and the identification procedure is followed with all the rigour of due process as a procedural guarantee, in accordance with the provisions of article 29 of the Constitution, which states: “No one may be tried except in conformity with the laws that predate the act of which the person is accused, before a competent judge or court and in accordance with all the procedure appropriate to each case. In criminal matters, permissive or favourable laws, even if they postdate the act, shall be applied in preference to restrictive or unfavourable laws. Everyone is presumed innocent until declared guilty in a court of law. Anyone who is accused is entitled to the right of defence and to the assistance of counsel of their own choosing or assigned by the court during the investigation and trial; to a fair and public hearing without undue delay; to submit evidence and to challenge evidence brought against them; to challenge a conviction; and not to be tried twice for the same act. Evidence obtained in violation of due process is automatically null and void.”

131. Likewise, with Decree 4000 of 2004 regulating the rights and duties of foreign citizens in Colombia, and Decree 01 of 1984, the Administrative Litigation Code, regulating administrative actions, it can be seen that any migration-related administrative proceedings against a migrant worker alleged to be in breach of the law must always begin with notification, personal if possible, of the formal initiation of a migration status check, the establishment of a working mission and opening of the administrative proceedings, which must be duly notified, and in which a vital part of the evidence is deemed to be the alien’s

own unforced and voluntary testimony, this being the time when the right to mount a defence and challenge evidence comes into play, enabling the administration to give the alien a hearing and admit any documents the alien considers to have a bearing on the proceedings.

132. At this point in the procedure, the nature of the migrant worker and/or alien plays a vital role, since Colombia, as represented by the migration authority, provides the option of having a translator present to assist during the proceedings if informed that the alien has difficulties with the language or communication. A translator may be located in collaboration with consulates or communities from the country concerned, or if none can be found through official channels then it may be a person accompanying the alien. Consequently, migrant workers who become subject to a migration-related administrative status check and proceedings will never be left without the means of communication, and can make calls and seek advice as they see fit.

133. The migration authority's decision is taken after analysis of the facts of the case and legal arguments compiled and presented by both the administration and the individual whom the proceedings concern.

134. In compliance with article 28 of the Constitution, and considering the judicial police functions undertaken by officials at the Alien Affairs Branch of the Administrative Department of Security (DAS), the Department guarantees the constitutional precept stating "all persons are free, and this freedom may not be restricted except in accordance with a written order from the competent legal authority".

135. Aliens subjected to preventive detention, like Colombian nationals, must be brought before a competent judge within 36 hours for a ruling. This is in accordance with the right of habeas corpus, a legal institution whose purpose is to guarantee the personal freedom of the individual, with a view to preventing arbitrary arrest and detention. It is based on the obligation to bring anyone detained, within a fixed time, before a judge, who may order the individual's immediate release if unable to find any adequate reason for the detention.

136. According to the second progress report of the rapporteur on migrant workers and members of their families in 2001, there are a number of international statutes of a general character that protect migrant workers or other unauthorized migrants who are being held in detention. According to the International Covenant on Civil and Political Rights: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." Similarly, under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, detained persons may not be subjected to torture or cruel and degrading treatment; likewise, the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights also proscribe any violation of the fundamental rights of persons in detention.

137. Whether aliens have entered Colombian territory through authorized migration control posts or at unsupervised points, they must be guaranteed the same treatment as regards the strictness of the measures taken to determine the causes and conditions that might give rise to detention in the course of migration control procedures.

138. In consequence of the above, any action whose effect is to deprive people of their freedom, be they Colombian or foreign, must be executed under the orders of a competent authority and in accordance with the judicial police powers conferred upon the Administrative Department of Security (DAS) by law.

## **I. Special programmes to address the special interests of migrant children, including unaccompanied and separated children**

139. Regarding the situation of unaccompanied children and adolescents, the first procedure when minors enter Colombia is carried out by DAS, which establishes whether they are travelling without adult accompaniment and whether or not they have family or someone else to take responsibility for them in Colombia. In cases where children or adolescents enter the country completely unaccompanied and have no family in Colombia, DAS notifies the situation to the ICBF, which has to begin the process of reinstating minors in their rights.

140. This procedure forms part of the technical process of rights reinstatement, approved by Resolution 0911 of 2007, and is carried out by the Family Ombudsman. The first step in the process is to ascertain the rights of the child or adolescent concerned and take measures to reinstate them, depending on the issues affecting the individual. These measures do not always include placing the minor in a protective institution, as this depends on a variety of factors (age, issues, special circumstances). The child or adolescent is then restored to his or her family in the country of origin. It is important to note that when this is done, the ICBF carries out an assessment of the family and its suitability as a care provider, and in some cases repatriation is carried out so that official institutions in the home country can take charge of the child or adolescent. It should likewise be made clear that repatriation is understood as a rights reinstatement measure, and the child's best interests are always paramount when this measure is taken.

141. In Colombia, there are no restrictions on the entry of parents or offspring, be they Colombian or foreign citizens, for the purpose of family reunification. In accordance with DAS provisions, entry applications from parents and children are dealt with in a positive, humane spirit with a view to the best interests of the child or adolescent, and with promptness and respect for personal dignity and human rights.

142. Because Colombia recognizes the right to family reunification for children and adolescents who live in the country but do not have Colombian nationality or official authorization to remain, minors are allowed to enter or leave the country to visit their parents, while parents who are in Colombia are allowed to leave to visit their children.

143. Thus, the country recognizes the right to family reunification for children and adolescents who live in the country but do not have Colombian nationality or official authorization to remain, and for those who are outside the country while their parents reside there. It is important to note that the views of the children and adolescents themselves must always be taken into account when decisions relating to family reunification are taken, always provided they are old and mature enough to participate in decision-making. Thus, applicants and their families are protected against the unfavourable consequences of making an application to enter or leave the country with a view to family reunification.

144. Lastly, it should be mentioned that children and adolescents, whether Colombian or foreign citizens, are never expelled or deported from Colombia.

145. Annex 4 includes information on the number of children and adolescents from migrant families who benefited from the different ICBF programmes between January 2009 and March 2011. This information is held in the Unified Register of Beneficiaries (RUB) of the Institute.

**J. Legislation and practice providing for mechanisms to monitor the situation of migrant women, including those employed as domestic workers, and safeguards and guarantees to protect them from exploitation and violence**

146. The situation of all aliens in Colombia is closely monitored through the mechanisms operated on the ground by the competent authorities. However, the Colombian State has no specific mechanisms, as only 0.05 per cent of the population are foreign migrant workers.

**K. Procedures assisting victims of trafficking, especially women and children**

147. For a response to this point, please see the information given in section G *supra*.

**L. Measures taken to provide assistance given by the State party to its migrants abroad**

148. The Colombia Unites Us programme of the Department of Migration and Consular Affairs and Service to Citizens is an initiative that has been implemented by the Ministry of Foreign Affairs of Colombia since 2004 with the goal of connecting and assisting Colombians abroad. This programme has spearheaded the design and implementation of the comprehensive migration policy, institutionalized by National Council on Economic and Social Policy (CONPES) document 3603 on comprehensive migration policy, which contains initiatives in the following areas for the benefit of Colombians abroad: Civic and community involvement, Social security, Migrating for work, Productive allocation of remittances, Return, Characterization of Colombians abroad, Access to education programmes and Promotion of culture, among others.

149. The functions of the Colombia Unites Us programme are laid down in Ministry of Foreign Affairs Resolution 4255 of 2010. This resolution establishes the following functions for the programme, among others:

- (a) To formulate, coordinate implementation of, and follow up and evaluate the migration policy of the Colombian State;
- (b) To strengthen the instruments used to connect Colombians abroad;
- (c) To assist the country's consulates in strengthening the Colombian community abroad by setting up and operating working groups and committees of Colombians abroad;
- (d) To establish channels of communication with Colombians abroad on issues affecting the country;
- (e) To support mechanisms promoting orderly, regulated migration, including in particular the signing and follow-up of agreements regulating labour migration flows;
- (f) To cooperate with the relevant public- and/or private-sector bodies on the design of services adapted to meet the needs of Colombians abroad and their families in Colombia;
- (g) To coordinate the design, implementation and follow-up of programmes to facilitate the return of Colombians from abroad;
- (h) To create, nurture and manage international know-how and technology transfer channels for the benefit of members of the Colombian community abroad and their families in Colombia;

(i) To design strategies and programmes for identifying and characterizing Colombian international migration;

(j) To support the formulation of policies to make it easier to send resources to the country and channel these into saving and investment;

(k) To support the design of public policies, strategies and programmes to be operated by regional governments for the benefit of members of the Colombian population abroad and their families in Colombia.

150. The Colombia Unites Us programme is implemented through the following areas of action:

(a) The Community Abroad Plan: The purpose of the Community Abroad Plan is to strengthen the Colombian community abroad, encouraging partnerships and working teams that consolidate ties of trust between Colombian migrants. It also allows the work done by the Colombia Unites Us programme to be publicized among the migrant community and its needs known;

(b) Adaptation of services to Colombians abroad and their families in Colombia. The objective is to implement initiatives for Colombians abroad and their families in Colombia in the areas of social security, education and the channelling of remittances into saving and investment. The specific programmes that have been implemented, with the support of different public- and private-sector bodies at both the national and regional levels, are:

(i) Promotion of Regulated and Orderly Migration. This aims at the application of strategies for enhancing and promoting complete respect for migrants' rights and preventing clandestine migration, human trafficking and exploitation of the labour of Colombians abroad;

(ii) The Positive Return Plan (PRP). The purpose of this is to provide the tools needed for migrant Colombians returning to the country to play a productive role in the economy by recognizing the experience, skills and capabilities that they have acquired abroad and that can contribute to the country's development;

(iii) The Colombian International Migration Observatory (OMIC). The purpose of the OMIC is to centralize, make available and analyse information and research on the issue of migration, Colombian migration dynamics and the impact of these on both the origin and the destination countries;

(iv) The Redes Colombia portal. The purpose of this cross-cutting technological networking platform, which covers all five areas of action of the Colombia Unites Us programme, is to establish channels of communication between Colombians abroad and between these and their home country. It is intended to develop networked social processes, increase social capital and strengthen existing social organizations.

## **1. The Community Abroad Plan**

151. The specific goals of the Community Abroad Plan are:

(a) To ascertain the needs of the Colombian community abroad;

(b) To publicize the actions of the Colombia Unites Us programme among the Colombian community abroad;

(c) To identify, analyse and contact organizations of Colombians abroad;

(d) To operate working groups to implement coordinated activities for the benefit of the community;

(e) To strengthen the links between associations and consulates;

(f) To undertake actions that connect members of the Colombian community with one another and their home country.

152. The Plan includes the following activities.

**a. Meetings with the Colombian community abroad**

153. The Colombia Unites Us programme, with the support of consulates, holds information meetings with Colombians abroad in order to publicize the services adapted by the Colombian Government for their benefit. Another purpose of these meetings is to learn the needs of Colombians abroad. Details of planned meetings can be found at [www.redescolumbia.org/colombianosune](http://www.redescolumbia.org/colombianosune).

**b. Promoters of the Colombia Unites Us programme**

154. The purpose of these is to provide support to consulates in areas where there is a large presence of Colombians, assisting them in their efforts to strengthen ties with the community. The aim is for promoters to replicate, support and enhance the work of the Colombia Unites Us programme, especially its strategies for strengthening social capital and civic involvement, in accordance with the methodology laid down by the programme for this purpose.

155. The methodology developed by the Colombia Unites Us programme consists in supporting the creation of working groups from the Colombian community in accordance with the needs and interests identified. These working groups are inclusive and participatory and are formed by issuing an open invitation to the Colombian community abroad, with all organizations and groups being welcome to participate.

156. The values and principles common to all working groups are:

(a) Working groups are non-profit-making;

(b) Working groups do not have political interests or objectives;

(c) Working groups are autonomous and independent, the consulate and the Colombia Unites Us programme being only facilitators of the process; and

(d) The work of the working groups must be based on the principle of reciprocity, meaning that the expectations of their members, based on common interests, should be reciprocally met.

157. Once the working groups have been formed, and with a view to ensuring their sustainability and ongoing development, the organizational capabilities of individual members and the group need to be enhanced, a process in which Colombia Unites Us will provide support. Improvements will be sought in the following areas:

(a) Confidence-building;

(b) Project development;

(c) Personal skills: teamwork, leadership, conflict resolution, running of meetings;

(d) Commitment to the project;

(e) Development of critical capabilities and commitment;

- (f) Management capacity;
- (g) Process definition;
- (h) Definition of functions or roles.

**c. Strengthening links with Colombians abroad**

158. The purpose of this is to link up organizations of Colombians abroad. To date, the Colombia Unites Us programme has identified 813 organizations of Colombians abroad. These are of every kind, encompassing cultural, political, sporting and business organizations. Another aim is to strengthen ties between Colombians abroad and the home country by means of different measures aimed at second and third generations of migrants. Migrant Week, consisting of events for migrants and their families in Colombia, is held every November as part of this effort.

**d. Publicization of Colombia Unites Us among the Colombian community abroad**

159. The purpose of this is to maintain fluid communication with Colombians abroad by means of periodic bulletins, communiqués containing information of interest and constant interaction through the Colombia Unites Us network, to which Colombians have signed up from all over the world. The idea behind this effort is for Colombians abroad to be kept informed about the services adapted for their benefit, the actions of consulates and the work done by organizations of Colombians abroad.

**2. Adaptation of services for Colombians abroad and their families in Colombia**

160. The following are the services that have been adapted to the needs of the Colombian population abroad in the areas of pensions, health care, education, saving and housing purchases:

**a. SENA virtual courses**

161. Colombians anywhere in the world can receive training in different subject areas through the web page of the National Vocational Training Service (SENA): [www.senavirtual.edu.co](http://www.senavirtual.edu.co). Virtual training facilities include:

- (a) 220 free courses lasting between 40 and 200 hours;
- (b) 1,200 tutors available to supervise training; and
- (c) Certification by e-mail when the course is passed.

162. SENA offers courses in the following areas:

- (a) Art, culture, leisure and sport;
- (b) Natural and applied sciences;
- (c) Social and educational sciences and government services; and
- (d) Information technology, finance, administration, health care, etc.

**b. The Open and Distance University**

163. The Open and Distance University (UNAD) provides accessible education at the primary, secondary and technological, undergraduate and postgraduate levels, available for all Colombians via the Internet from anywhere in the world. Depending on the course, face-to-face or blended learning methods may be used. Its web page is: [www.unad.edu.co](http://www.unad.edu.co).



164. In addition, UNAD Florida offers masters and degree courses, not only to Colombians but more generally to Spanish-speaking migrants wishing to begin their studies on a specific course or continue them using the system of homologation of academic credits. The university's courses are conducted in Spanish with bilingual support from the academic staff of the institution.

**c. EAN University**

165. Under an agreement between the Ministry of Foreign Affairs and EAN University, Colombians resident abroad and returning Colombians may receive a 20 per cent discount on the enrolment fee for the first level of e-learning courses provided directly by EAN at the undergraduate, postgraduate and continuing education levels.

**d. Validation of qualifications and homologation of studies abroad**

166. Validation means recognition by the Colombian Government of a higher education qualification granted by an institution of higher education abroad or by an institution legally authorized by the competent authority in the country concerned to issue higher education qualifications. The qualifications validation procedure is detailed in Resolution 5547 of 1 December 2005.

**e. The Social Security for Colombians Abroad programme of the Social Security Institute (annex 5).**

167. The pension scheme can be joined by telephone, using the freephone line 18662953833 from the United States or the telephone number 3437344 from any country in the world, or by e-mail to colombianosexterior@iss.gov.co, where the applicant will be able to register his or her membership data and base income for contribution purposes as a self-employed worker.

**f. Binational Health Week**

168. Binational Health Week is a health-care, prevention and education initiative aimed at the most vulnerable Latin American populations living in the United States and Canada. It is led by the University of California Health Initiative of the Americas. The following countries currently participate in the initiative: Guatemala, El Salvador, Honduras, Colombia, Ecuador, Peru and Mexico.

169. The goals of Binational Health Week are to:

(a) Achieve borderless health care for the Latin American population living and working in the United States;

(b) Meet the health needs of people of Colombian and Latin American origin in the United States;

(c) Treat migrants' health as a bilateral responsibility shared between the origin and destination countries;

(d) Step up health-care provision, prevention and promotion campaigns among the Latin American population in the United States;

(e) Coordinate existing resources to increase health-care access and coverage for Colombians in the United States.

170. Binational Health Week is held every year in October. Colombia participates through its consulates in the United States and Canada, and Colombians can also apply for assistance to any of the consulates of the countries participating in the initiative.

**g. Purchasing housing from abroad**

171. There are three methods for purchasing housing from abroad. The first is through property fairs in the United States, Spain and the United Kingdom ([www.feriascamacol.com](http://www.feriascamacol.com) and [www.feriainvierteencasa.com](http://www.feriainvierteencasa.com)). The second is to have a relative in Colombia act as the contact for purchasing the property. Thirdly, an estate agency may perform this role.

**h. Special scheme for saving to invest in housing**

172. The sums allocated by a worker to long-term saving in what are called “construction stimulus saving” (AFC) accounts will not be included in the base income used to calculate tax withheld at source and will be deemed not to form part of the individual’s income or occasional earnings, up to a limit of 30 per cent of his or her occupational or taxable income for the year. There may be only one account holder for each account. This allows a worker who pays tax at source to use the tax thus saved to buy housing. In other words, instead of paying it over to the Government, the worker can use it to make the down-payment on a home or meet monthly mortgage instalments.

173. In the case of wage earners, the sums allocated by the worker to his or her AFC account will be credited directly by the employer to the financial institution concerned, and when the employer calculates the amount of the tax to be withheld at source it will deduct the whole of the sum to be thus credited from the monthly base income on which tax is payable, subject to the maximum of 30 per cent of the worker’s earnings.

174. By paying into an AFC account, therefore, workers can reduce the income amount declared for tax purposes, increasing their net income. In summary, this benefit consists in the worker setting a monthly saving amount, which is deducted and paid directly by the employer to the bank (the value deposited includes the retention). The account holder then has the option of using these funds to buy housing at any time.

175. The steps for using an AFC are for the worker:

- (a) To open the account in a bank of his or her choice;
- (b) To set a monthly saving amount and ask the employer to deduct it from his or her pay and credit it to the AFC account;
- (c) To arrange for the bank to make payment to the seller when he or she comes to buy a home.

**i. Voluntary saving with the National Saving Fund**

176. Colombians living abroad may sign a voluntary saving contract with the National Saving Fund (FNA), provided a family member is affiliated to the Fund in Colombia. Some benefits that are obtained with a voluntary saving account are: the opportunity to take up home loans offered by the FNA; the opportunity to save to meet a saving target when this is a condition of the loan; certification to apply for the housing subsidy; certification for tax benefits. Furthermore, no administration fees are charged for voluntary saving accounts.

**3. Promotion of regulated and orderly migration**

177. This area of action involves the following activities:

- (a) Information campaigns to give people choosing to migrate the knowledge they require to do it in a safe and informed way;

(b) Work with mayors' and governors' offices in the areas that are the largest sources of migrants to forestall the adverse effects of migration and enhance the effects of migration on development in the regions;

(c) Assistance and follow-up in the labour migration programmes implemented by Colombia, and work to prepare for the signing of new labour migration agreements;

(d) Support for migrant regularization processes in recipient countries.

#### **4. The Positive Return Plan**

178. The Positive Return Plan (PRP) was devised by the Ministry of Foreign Affairs to provide comprehensive assistance to returning Colombian migrants. The Plan ensures inter-institutional coordination of the different bodies involved at the national, departmental and municipal levels, in both the public and the private sectors, whose programmes and plans serve the needs of this population in one way or another.

179. It should be noted that the PRP does not cover the journey back to Colombia from wherever the Colombian citizens concerned have been living, but begins to operate only once they are back in the country.

180. The principles underpinning the PRP are:

(a) Comprehensive attention: the creation of procedures for assisting and working with returning migrants, attending to their physical and psychological health, assisting their integration into the family, social and work environment and using the human capital acquired abroad to generate new ventures, taking account of the different dimensions of the human beings involved;

(b) Coordinated work: coordination of the work done at the national, departmental/municipal and international levels by creating partnerships with organizations at all these levels;

(c) Orderly migration carried out under humane conditions so that it benefits both the migrants and society at large;

(d) Gender transversality, with a view to promoting equity between women and men in every plan, project and programme on the basis of recognition for their differentiated needs;

(e) Recognition of fundamental individual and collective rights in the migration process.

#### **5. The Colombian International Migration Observatory**

181. The Colombian International Migration Observatory (OMIC) was created by Ministry of Foreign Affairs Resolution 0339 of February 2010. Its fundamental purpose is to facilitate the generation of analyses of the migration issue so that effective State action can be taken and improved public policies implemented for the benefit of Colombians abroad and aliens in Colombia.

##### **Objectives**

182. The general objective is to analyse information and research on the issue of migration, Colombian migration dynamics and the impact of these on both the origin and the destination countries.

183. The specific objectives are to:

- (a) Analyse information and research on the issue of migration, Colombian migration dynamics and the impact of these on both the origin and the destination countries;
- (b) Analyse data on the Colombian migration situation;
- (c) Compile analytical documents on the subject of migration as inputs for decision-makers and policymakers;
- (d) Prepare and distribute migration research project products and/or publications;
- (e) Join and participate in regional, national and international forums of an academic nature dealing with migration issues;
- (f) Conduct and/or collaborate with other bodies and groups on the implementation of migration-related information and training activities;
- (g) Collaborate on the implementation of awareness-raising measures relating to migration and its effects and targeted at different social groups;
- (h) Provide technical and academic support to the diplomatic and consular missions of Colombia in dealing with migration-related requirements laid down by multilateral organizations and the ramifications of these.

184. The OMIC operates through five main committees, which issue periodic bulletins:

- (a) Migration and development;
- (b) Special dimensions of migration (people- and migrant-trafficking, asylum-seekers and refugees, prisoners);
- (c) Population trends (characterizations of Colombian communities abroad: gender, culture, civic participation, youth, children, etc.);
- (d) Migration for work;
- (e) Return.

185. The studies and documents produced by the OMIC can be consulted by registering at the web page: [www.redescolombia.org/colombianosune](http://www.redescolombia.org/colombianosune).

## **6. The RedEsColombia portal**

186. The RedEsColombia portal ([www.redescolombia.org](http://www.redescolombia.org)) is a project that uses the latest generation of Internet applications (known as social software or Web 2.0) to create a network of networks among Colombians and Colombian organizations, wherever in the world they are. This allows the Colombian *diaspora* to keep in touch with their home country, giving rise to all kinds of possibilities that benefit not just participants, but the “progress” of Colombia.

### **The mission of RedEsColombia**

187. The mission of RedEsColombia is to stimulate the creation of links between Colombians and people who have an interest in Colombia and thereby generate a system of social networks on the portal, contributing to enhanced social capital among Colombians and to the country’s development.

188. Networks are being created in the following subject areas:

- (a) Knowledge;

- (b) Culture;
- (c) Trade;
- (d) Community.

189. RedEsColombia has seven characteristics that set it apart from similar Internet sites:

- (a) It is a working tool;
- (b) It creates synergies between the public sector, the private sector and civil society;
- (c) It is the only “network of networks” for Colombian individuals and organizations around the world;
- (d) Its ultimate aim is to generate positive impacts for development in Colombia;
- (e) It fosters the creation of a great multiplicity of thematic and citizens’ networks;
- (f) It provides a wide range of information, services and resources of interest to Colombian migrants;
- (g) It offers the most varied directory of Colombian groups, firms and organizations on the Web;
- (h) It creates links between users on the basis of interests and locations;
- (i) It provides information about events involving Colombians everywhere in the world.

#### **The public targeted by RedEsColombia**

190. Although RedEsColombia aims to link together the community in general, it has a special interest in registering Colombian scientists, researchers, students, artists, arts managers, community leaders, businesses and organizations abroad, including: firms, NGOs, foundations, associations, institutions and trade groupings.

191. Some of the portal’s characteristics are:

- (a) It was constructed using the latest information and communication technologies available;
- (b) It is equipped with the most advanced social software for the construction of communities and networks on the Internet;
- (c) The project is supported by the Government, together with the IOM, for the use of all Colombians, whether living abroad or in Colombia itself, to encourage them to link up with one another;
- (d) It is an innovative project that is intended to set an example for other countries and provide a model to be replicated, especially in Latin America;
- (e) It provides basic tools, like other platforms designed to create networks of personal contacts, but also innovative tools enabling groups and individuals to share, exchange, learn about and create projects, information, knowledge and, in general, experiences of interest to them and other users.

192. The functionalities and benefits RedEsColombia provides to its users include:

- (a) Setting up and/or joining networks;
- (b) Locating Colombian individuals and communities all over the world;

- (c) Building their own contacts lists;
- (d) Developing group projects;
- (e) Publishing their personal blog;
- (f) Starting discussion forums;
- (g) Sharing and consulting documents;
- (h) Publishing news and classified advertisements;
- (i) Scheduling events;
- (j) Creating photo galleries;
- (k) Receiving information bulletins.

193. Colombians abroad can register at [www.redescolombia.org](http://www.redescolombia.org) and contact Colombian individuals and organizations in Colombia and around the world. The RedEsColombia statistical report (August 2010 to July 2011) can be found in annex 6.

#### **M. Measures taken to facilitate migrants' reintegration in case of return to the State party**

194. With a view to complying with article 67 of the Convention, the Ministry of Foreign Affairs sets out to help people returning from abroad to reintegrate into Colombian society via the Positive Return Plan (PRP). The purpose of this strategy is to assist all migrant Colombians who wish to return to the country by providing them with positive options for their return and recognizing the experience, skills and knowledge they have acquired abroad, attending to their needs and creating economic and social opportunities for them that contribute to the country's development.

195. The PRP is implemented in accordance with recommendation number 2 of CONPES document 3603 of 24 August 2009, which contains the instruction: "Prepare and coordinate implementation of the Return Plan for Colombians who are outside the country." The Plan was approved on 3 June 2010 by the National Intersectoral Migration Commission (CNIM).

196. The PRP has four basic areas of action, of which the first is fully operative: immediate assistance in Colombia for migrants returning in a situation of vulnerability, who are provided with legal orientation and guidance, advice and practical assistance to facilitate their entry into the labour market.

197. The other three areas of action are currently in the process of implementation, as they require resources that are still being procured. These areas of action are: (a) Labour market participation with the help of an Occupational Capability Certificate issued by SENA, following occupational classification, and training in productive work; (b) Entrepreneurship and business, the goal of which is to support entrepreneurship among migrants who have business ventures they wish to pursue, either on their own or through associations of returning migrants; and (c) Return of highly skilled human capital, the aim of which is to secure the participation of highly educated Colombians in special projects in business, industry and academia. These areas of assistance are operated by referral and opportunities centres for Colombians returning from abroad (CRORE), staffed by migration professionals specializing in each of the specific areas.

198. The return of Colombian citizens has been driven by factors of an economic nature, as they have found themselves unable to obtain work in countries such as the United States and Spain. It is important to realize, then, that for most of these people informal jobs have

been the main source of income both to provide for their own subsistence and to send remittances back to their families in their home countries.

### Worker remittance inflows into Colombia

<i>Year</i>	<i>Amount</i>
2000	1 578.0
2001	2 021.4
2002	2 453.7
2003	3 060.1
2004	3 169.9
2005	3 313.7
2006	3 889.6
2004	4 492.6
2008	4 842.4
2009	4 145.0
2010	4 023.5

*Source:* Colombia Unites Us, Ministry of Foreign Affairs, 2011.

199. The results of the PRP up to February 2010 are as follows:

#### Centres for returners

200. Four referral and opportunities centres for Colombians returning from abroad (CRORE) have been set up in Bogotá and in the Departments of Risaralda, Valle del Cauca and Norte de Santander.

201. The total number of people assisted by the CRORE to date has been as follows:

(a) 1,075 returning migrants were assisted in Bogotá between 7 June 2009 and 31 January 2011;

(b) 843 returning migrants were assisted in the Risaralda Region between October 2009 and January 2011;

(c) About 1,200 returning migrants were assisted in the Valle del Cauca Region between March 2010 and January 2011;

(d) 32 returning migrants were assisted in the Norte de Santander Region between November 2010 and January 2011.

202. Implementation of the PRP began in Bogotá in June 2009 with the signing of the Framework Agreement on International Cooperation between the Ministry of Foreign Affairs of Colombia, the General Secretary of the Bogotá mayor's office and the IOM. With the signing of the Convention, the Welcome Home (*Bienvenido A Casa*) programme was created, the main objective of this being for "the parties to join forces to consolidate the CRORE-Welcome Home project, whose purpose is to provide immediate social and legal guidance and attention to the Colombian migrant population returning to the country in conditions of vulnerability, with a view to promoting economic and social integration in their communities of origin".

### Emergency humanitarian assistance in Bogotá during the third quarter of 2010

203. Different activities were undertaken by the Emergency Humanitarian Assistance Section during the third quarter of 2010 with a view to providing immediate assistance and attention to vulnerable Colombian migrants returning to Bogotá from abroad.

204. For this period, the focus of emergency humanitarian assistance was on meeting the needs of Colombians forced to return from the United States, Jamaica, China, Argentina and Spain. Special assistance was provided to a Colombian citizen living in Bogotá who had family difficulties, and who was provided with food and lodging for two days (see table below).

### Emergency humanitarian assistance in the third quarter of 2010, by country returned from

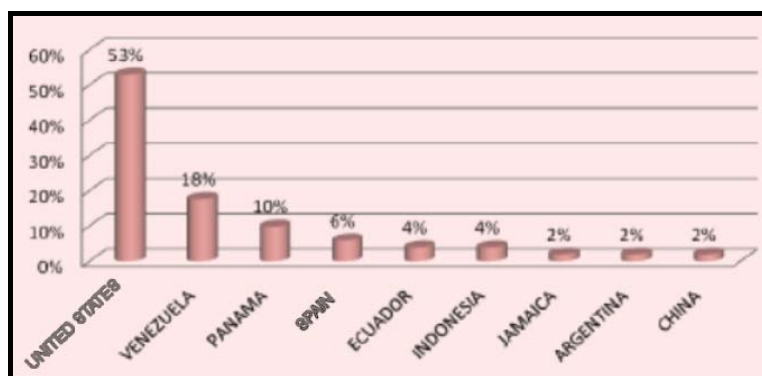
Country	Number returned
United States	4
Jamaica	1
Argentina	1
China	1
Spain	1
<b>Total</b>	<b>8</b>

Source: Emergency Humanitarian Assistance Section, Welcome Home programme.

205. In 2010, emergency humanitarian assistance was provided by the Welcome Home programme in a total of 51 cases, of which 53 per cent came from the United States, 18 per cent from Venezuela, 10 per cent from Panama, 6 per cent from Spain and smaller percentages from countries such as Ecuador and Indonesia, with 4 per cent, and Jamaica, Argentina and China, with 2 per cent (see chart below).

Figure 1

### Total cases of emergency humanitarian assistance, by country returned from



Source: Emergency Humanitarian Assistance Section, Welcome Home programme.

206. The actions implemented by the Emergency Humanitarian Assistance Section focused on:

- (a) Identification of Colombian nationals, particularly those deported from the United States. In some cases, as the table detailing emergency humanitarian assistance by



country returned from shows, people were assisted with transport to their destination and the provision of food and toiletry kits;

(b) In the case of undocumented returnees, support from the Legal Section has made it possible to expedite identity documents quickly and efficiently at the civil registry (*Registraduría*, the organization that provides identity documents in Colombia) in the Chapinero district;

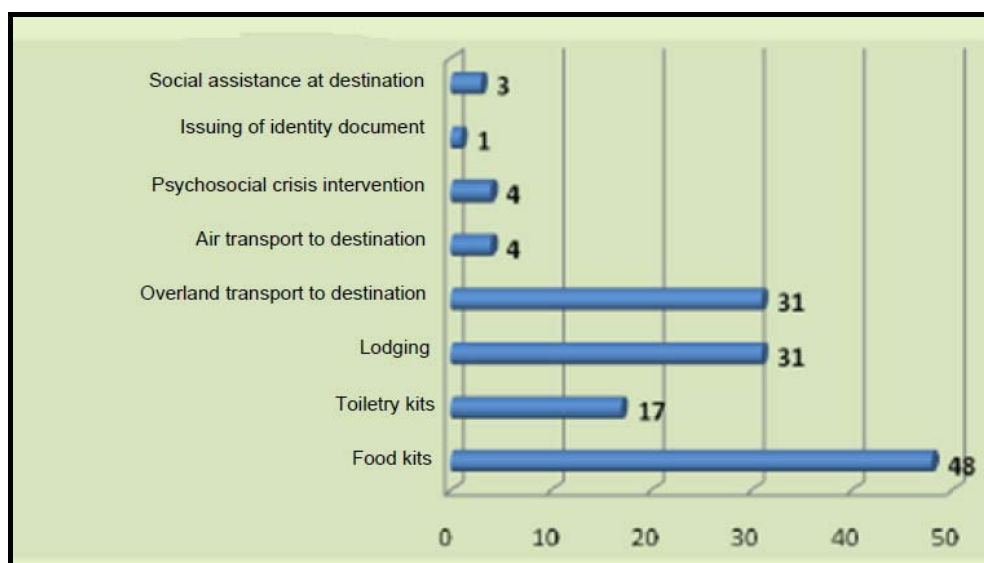
(c) Tickets were arranged for overland travel to the cities of Medellín, Santiago de Cali and Buenaventura with different transport companies. Valle del Cauca continues to be the department of destination most frequently requested;

(d) Help with family reunification for returnees who had moved with the idea of improving their economic situation and lost touch with their family network. The Centre established contact with family members so the returnees could be met at their destinations.

207. A total of 48 food kits were handed out, while 31 beneficiaries used the lodging service, averaging two nights apiece. A total of 31 people were provided with transportation to their destination by land routes, and four people were transported by air. Basic hygiene needs were met by the provision of a total of 17 toiletry kits. A total of four people required assistance to deal with a psychosocial crisis brought on by difficulties arising from their forced return; one beneficiary was helped to obtain his identity document, with the cooperation of the Chapinero civil registry. Thanks to the arrangements made by the Section, a total of three people benefited from support in their cities of final destination, being assisted by other programmes such as SOS Paisas, run by the Medellín mayor's office and the Hospital de San Andrés y Providencia (see chart below).

Figure 3

**Total services involving the emergency humanitarian assistance section**



Source: Emergency Humanitarian Assistance Section, Welcome Home programme.

**Legal assistance**

208. During the last quarter of 2010, the largest number of requests for advice from the Legal Section was in the area of migration and aliens law, with nine enquiries made by beneficiaries who had returned or intended to return, seeking information on the procedure for obtaining temporary visas for a spouse or permanent companion and for qualified

residency. In second place, with five enquiries, was the area of labour and social security law, and the advice given centred on the application of social security agreements signed by Colombia with other States, especially Spain (see table below).

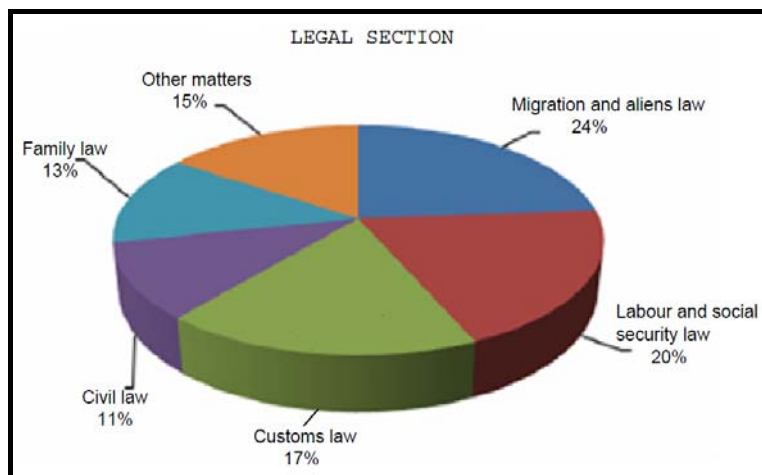
Table 2  
**Cases dealt with by the Legal Section each month and in the whole quarter**

<i>Area</i>	<i>October</i>	<i>November</i>	<i>December</i>	<i>Total</i>
Migration and aliens law	4	4	1	9
Labour and social security law	2	3	0	5
Customs and tax law	1	0	1	2
Civil law	0	0	0	0
Family law	1	0	0	1
Other matters	2	5	6	13
<b>Total</b>	<b>10</b>	<b>12</b>	<b>8</b>	<b>30</b>

*Source:* Legal Section, CRORE Welcome Home programme.

209. The following chart shows that the largest number of cases in which advice and assistance have been provided by the Legal Section has continued to be in the area of migration law, with 24 per cent, followed by labour and social security law, with a total of 20 per cent. The advice given in the remaining cases, ranked from most to least requested, has concerned customs law (17 per cent), other matters (15 per cent), family law (13 per cent) and civil law (11 per cent).

Figure 4  
**Total cases dealt with by the Legal Section**



*Source:* Legal Section, CRORE Welcome Home programme.

### **Economic assistance**

210. The work done by the Economic Section in the period from October to December 2010 will be analysed from the perspective of three complementary approaches, the purpose of which is to enable genuine economic reintegration to take place. They are designated as follows:

(a) Profiling and initial guidance for returning Colombians: this phase begins when the user enters the Welcome Home programme for the first time, and the aim is to establish the specific orientation or main tendency evinced by returning Colombians from an economic and administrative standpoint;

(b) Employability model: this is oriented towards returning Colombians who wish to concentrate their economic reintegration efforts on finding work to meet their basic needs;

(c) Business venture model: this is oriented towards returning Colombians whose approach is entrepreneurial, with a business idea or business plan.

211. It is important to note that the three components outlined above are not mutually exclusive, so that returning Colombians have the opportunity to move between these approaches for the whole time they are in the Welcome Home programme while at the same time benefiting from ongoing guidance by the Economic Section, while those who are working can adjust their business idea or plan with a view to achieving economic independence.

## **N. Multilateral or bilateral agreements relating to migration the State party has entered into, including regional agreements**

212. The purpose of these agreements is to regulate migration flows in an orderly, coordinated way, the idea being that Colombian workers arriving in countries with which agreements have been signed are protected by the employment rights and guarantees provided for in the legislation of the receiving State.

213. With a view to providing social and employment protection to the migrant population of Colombians abroad and aliens in Colombia, labour migration agreements have been signed with Spain and social security (pensions) agreements under which periods of contribution are recognized with Spain, Uruguay, Chile and Argentina, while negotiations are currently under way with Brazil, Canada and Ecuador.

214. The Ibero-American Social Security Convention was approved by Act 65 of 1982. The draft agreement on application of the Convention was approved in 2009 and is currently awaiting ratification by the Colombian Congress.

215. Within the framework of the Andean Community of Nations, the Andean Council of Ministers of Foreign Affairs has passed decisions approving a number of social and employment instruments relating to labour migration, social security and health and safety at work, allowing Andean workers with a contract of employment to settle anywhere in the Community, guaranteeing their employment and social security rights and health and safety conditions at work, and recognizing the principle of equal treatment and opportunities throughout the Community.

216. These decisions represent a major step forward in the construction of Andean citizenship and the Andean labour market.

217. The Andean Social Security Instrument (Decision 583) is designed to ensure proper social security protection for migrant workers throughout the Andean Community. Approval of the regulations is at the technical discussion stage.

218. The Andean Instrument on Safety and Health at Work (Decision 584) lays down standards for actions that need to be taken in workplaces to reduce or prevent harm to workers' health. The implementing regulations were approved by Resolution 957 of the General Secretariat of the Andean Community.

219. The Andean Labour Migration Instrument (Decision 545) makes provision not only for the progressive and gradual liberalization of movement and residence for Andean nationals in the subregion for the purposes of work under a contract of employment but also for equal treatment and opportunities, respect for their human rights, and social and occupational guarantees. The domestic legislation required for the Decision to be applied by the Colombian State is currently in preparation (draft decree).

220. With regard to investment projects, likewise, inter-institutional and international technical cooperation and assistance will be fostered by means of institutional improvements, strategic partnerships and mechanisms for negotiating migration agreements/conventions dealing with labour, social security and the application of Andean Community rules, with a view to improving the management of migration and enforcing and guaranteeing migrants' rights.

221. The Andean Cooperation Mechanism on Consular Assistance and Protection and Migratory Matters: Colombia, in the exercise of its functions as Secretariat pro tempore of the Andean Community, has taken steps within the Andean Community to secure adoption by the region's countries of Decision 548 on this subject.

222. Implementation of this Decision in the Andean Community would serve to protect the interests of nationals of any of the Andean Community member countries who for different reasons are outside their home country and do not have any consular representation nearby, allowing consular assistance to be provided by any other Community country, irrespective of the Andean citizen's nationality. By way of example, a Colombian could be assisted at a Peruvian consulate and a Peruvian at a Colombian consulate.

223. Steps have also been taken to reactivate the Andean Committee of Migration Authorities, a mechanism allowing the migration authorities of the region's four countries to work more closely together.

224. Colombia has also expressed its support for the South American Human Development Plan for Migration of the South American Conference on Migration.

**O. Efforts made, also in cooperation with other States, in order to prevent migrants' loss of life at the land and maritime border areas**

225. The Colombian State has no records on this point.

**P. Measures to prevent clandestine movements and employment of migrants in an irregular situation**

226. In a spirit of compliance with articles 68 and 69 of the Convention being evaluated here, foreign citizens are free to seek employment in Colombia and to take it up on condition that they hold a visa allowing them to carry out that work or activity.

227. The Colombian State carries out migration control in this area by conducting on-the-spot checks on natural and legal persons with a view to ascertaining whether the recruitment, employment, admission and transportation of foreign staff has been carried out legally.

228. Migration laws provide for financial penalties to be imposed upon any natural or legal person hiring, taking on or giving employment to an alien without having fulfilled the migration requirements laid down by migration laws, and upon aliens receiving remuneration and carrying out an activity without complying with these same requirements.

229. These penalties range from half to seven times the current minimum statutory monthly wage (SMLMV) in both cases, so that once any infringement on either the employer's or the

employee's part has come to light, the protocols for administrative proceedings and due process described earlier will begin to be applied. An alien or migrant worker found to be in breach of migration law for working without having met the requirements laid down by law will initially be subject to a financial penalty for infringement of article 98 of Decree 4000 of 2004 when the grounds are as described below:

- (a) Failing to apply for prior authorization from the internal working group designated by the Minister of Foreign Affairs for changes of employer within 15 calendar days following the event;
- (b) Entering or leaving the country without complying with legal requirements;
- (c) Exercising a profession, occupation or trade other than the one authorized;
- (d) Carrying out remunerated activities without being so authorized;
- (e) Entering into commercial contracts with aliens without legal requirements being complied with;
- (f) Carrying out activities that unduly affect the public space.

230. A migrant worker in an irregular situation, then, initially faces a monetary or financial penalty that is graduated depending on the severity of the infringement, whether it is a first or repeat offence, and how promptly the offender complies with the ruling.

231. In a very large number of cases, migrant workers fined in this way declare that they lack the resources to pay the financial penalty and ask for the migration measure of deportation to be applied.

232. Where deportation from Colombia is concerned, it should be mentioned that this is an administrative procedure that is applied with all requisite rigour, and those affected have the right to appeal against it through government channels (*vía gubernativa*) and are only actually removed from the country once any appeals have been heard and the decision is final. In addition, aliens or migrant workers may only be deported on the following grounds:

- (a) Entering or leaving the country without complying with the relevant regulations, provided that there are no special circumstances warranting a fine;
- (b) Failing to pay the financial penalty imposed by the Administrative Department of Security (DAS), or when more than two months have elapsed since the enforcement of the penalty without payment of any instalment;
- (c) Being an illegal resident in the meaning of Decree 4000 of 2004, provided that there are no special circumstances warranting a financial penalty;
- (d) Obtaining a visa by fraud or deceit, making a false statement when applying for a visa or when carrying out administrative procedures prescribed by the migration authorities, or submitting documents that mislead the Ministry of Foreign Affairs or the migration authority for the purposes of entry, departure, legalization, control and registration;
- (e) Failing to change their visa or not applying for one when required to do so;
- (f) Engaging in an activity that is not authorized in their entry permit;
- (g) Meeting any of the grounds for non-admission or rejection;
- (h) Being the subject of continual complaints that cause them to be declared *persona non grata* in the interests of social harmony or public peace. Failing to leave the country within 30 calendar days following notification of the order cancelling the visa;
- (i) Failing to meet financial obligations to any natural or legal person by refusing to pay;

- (j) Being fined twice or more within the same calendar year by the same public body;
- (k) Having been fined by the migration authority for activities that unduly affect the public space, and then repeating this conduct.

233. Thus, clandestine migrant workers are not subject to expulsion by Colombia. Indeed, the rules are flexible enough to allow for special treatment based on the actual needs or requests of the alien.

234. Decree 4000 of 2004 establishes two classes of penalties for irregular migration situations, depending on the complexity of the infringement. In the first place, it applies a financial penalty, and in the second, deportation. Depending on the particular situation of the alien, it may be possible for them to regularize their situation so that they can obtain their visa on Colombian territory.

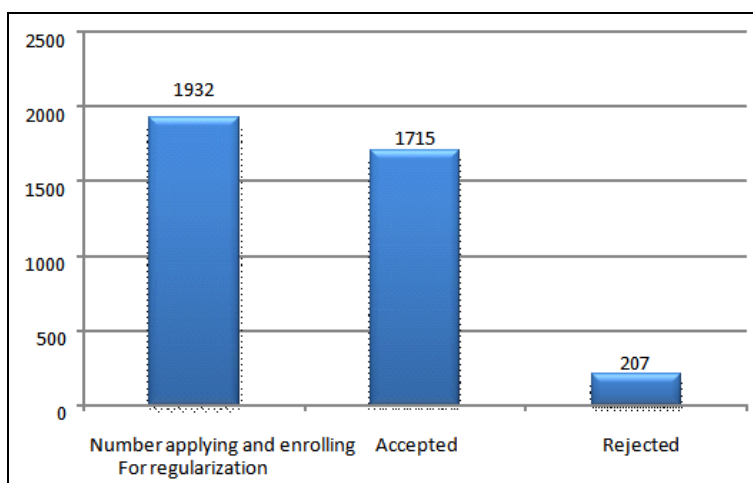
235. Pursuant to application of either of these two measures, the alien is issued with a safe conduct pass valid for 30 days so that he or she can comply with it without being subjected to detention.

236. On the basis of the powers conferred by article 189, paragraph 2, of the Constitution and Act 489 of 1998, and in accordance with article 124 of Decree 4000 of 2004, the national Government issued Decree 3970 of 14 October 2008 ordering the implementation of a process for regularizing aliens or migrant workers who had entered the country before 1 April 2008 and whose residence status was irregular, in addition to other terms and conditions. The purpose of this regularization was to obtain all possible information on migrant workers who were in an irregular residence situation.

237. From 14 November 2008 to 14 May 2009, all migrant workers and other aliens resident in Colombia on an irregular basis were able to apply to or enrol with the Alien Affairs Branch of the Administrative Department of Security (DAS) in Bogotá and with the different branch offices and operating posts up and down the country.

238. Six months after the time of enrolment, checks were carried out and results obtained from the study of the applicants' family, social, working and other environments. In all, 1,932 applications were received for regularization and the migration authority regularized a total of 1,715 migrant workers, turning down 207 applications for failing to meet requirements.

**Regularization process, 2008–2009**



Source: Data from the Verifications office of the Alien Affairs Branch, Administrative Department of Security (DAS).

239. The migrant workers accepted into this programme were issued a pass giving them temporary permission to remain in the country while their visa was being processed, free of charge and valid for 90 days, during which time they had to ensure they complied with the requirements for obtaining their visa from the Ministry of Foreign Affairs.

240. Those workers who were not accepted in the regularization process were given a safe conduct pass to leave the country, valid for 60 days.

241. Concerning the regularization process, it is important to note the lack of diligence and interest shown by some migrant workers who hindered their own application process by failing to comply properly with requirements such as the submission of documents requested from them in the course of the checking procedure, examples being the civil records of juveniles, marriage records, employment records, certificates issued by authorities, etc.

242. It is also important to stress the forbearance shown by the Colombian State in decreeing, in article 11, that fines should be waived for legal and/or natural persons entering into irregular employment relationships with migrant workers who came forward during the period allowed for the regularization process.

### **III. Specific provisions**

243. It is important to note that the general provisions for ensuring application of the Convention, which includes due compliance with articles 83 and 84 of the Convention, are set out in point 45 of the first report submitted for consideration by the Committee in January 2008.

#### **A. General principles**

##### **Article 1 (paragraph 1) and article 7: non-discrimination**

244. Concerning the principle of non-discrimination, the Colombian State confirmed its compliance with these articles in paragraphs 46 to 48 of the first report submitted to the Committee.

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

##### **1. Article 8: Right to leave any country including own and to return**

245. Concerning application of this article of the Convention, the Colombian State confirmed its compliance in paragraphs 49 and 50 of the first report submitted to the Committee.

246. Nonetheless, letter A of the present report gives detailed information on the subject.

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

247. Concerning application of these articles of the Convention, the Colombian State confirmed its compliance in paragraph 51 of the first report submitted to the Committee.

248. In addition to this, it is permissible for the regulations of the migration policies of each State to include measures that provide for the limitation of some rights, although the

fact of people being migrants does not mean they can be deprived of the protection provided to them by international human rights law.

**3. Article 11: Prohibition of slavery and forced labour**

249. Concerning application of this article of the Convention, the Colombian State confirmed its compliance in paragraph 52 of the first report submitted to the Committee.

250. According to Advisory Opinion 18 of the Inter-American Court of Human Rights, the fact of a person having migrant status may in no way constitute a justification for depriving them of the enjoyment and exercise of their human rights, including employment rights. Migrants entering into an employment relationship thereby acquire rights as workers that must be recognized and guaranteed, irrespective of whether their status in the State of employment is regular or irregular. These rights are a consequence of the employment relationship.

251. Employment relationships arising between migrant workers and employers, be these in the public or private sector, may generate international liability for the State in different ways. One of these arises when States tolerate actions and practices by third parties that prejudice migrant workers, either because they are not granted the same rights as citizens or because they are granted the same rights but some kind of discrimination is applied.

252. The advisory opinion referred to establishes that migrant workers have certain rights which are of great importance and yet are often flouted, namely the prohibition of forced or compulsory labour, the prohibition and abolition of child labour, special provision for women workers, and the rights relating to: freedom of union membership and association, collective bargaining, a fair wage for work done, social security, legal and administrative guarantees, a reasonable working day and appropriate working conditions (safety and hygiene), rest and compensation.

253. One of the problems that constantly arise, according to both the Inter-American Court of Human Rights and the migration authority's own experience, is the failure to grant the employment rights mentioned earlier to undocumented migrants. For example, many employers recruit them to provide a particular service for a lower remuneration than they ought to receive, they are dismissed for joining unions, and they are threatened with deportation, among other situations. On some occasions, undocumented migrant workers cannot even apply to the courts to enforce their rights because of fear about their irregular situation. This should not happen; although undocumented migrant workers could be deported, they always have the right to be represented before the competent authority so that any employment rights they may have acquired as workers can be upheld.

254. This being so, Colombia has sought to provide employment protection for migrants, be they Colombian or foreign, by defining in its criminal legislation the offences of trafficking in migrants, which carries a prison term of between six and eight years, and trafficking in persons, with a prison term of between 13 and 23 years. The purpose of this is to have sufficiently coercive tools available to break up international organizations carrying out these criminal activities.

**4. Articles 12, 13 and 26: Freedom of opinion and expression; freedom of thought, conscience and religion; right to join a trade union**

255. Concerning application of these articles of the Convention, the Colombian State confirmed its compliance in paragraph 53 of the first report submitted to the Committee.

256. The political right to create associations and unions is provided for by articles 38 and 39 of the Colombian Constitution:



“Article 38. The right to freedom of association for the pursuit of the activities undertaken by people in society is guaranteed.

Article 39. Workers and employers have the right to form trade unions or associations without interference from the State. Registration of their founding charter will automatically confer legal recognition. The internal structure and functioning of unions and social and trade organizations will be subject to the law and to democratic principles. Legal personhood may only be revoked or suspended by due legal process. Union representatives are recognized as having union privileges and all other guarantees necessary for the performance of their functions. Members of the police force do not have the right to join a union.”

257. Consequently, and in accordance with the constitutional principle of equality and non-discrimination, migrant workers are entitled to freely join and establish associations and unions and, accordingly, to form part of their governing bodies.

258. Article 388 of the Substantive Labour Code, as amended by article 10 of Act 584 of 2000, lays down “Conditions for executive committee members”:

“In addition to the conditions laid down in the articles of association, a precondition for membership of a union executive committee is membership of the union concerned; failure to meet this condition will invalidate the election.

In no event may a majority of executive committee members be foreign nationals.”

**5. Articles 14 and 15: Prohibition of arbitrary or unlawful interference with privacy, the home, correspondence and other communications; prohibition of arbitrary deprivation of property**

259. Concerning application of these articles of the Convention, the Colombian State confirmed its compliance in paragraph 54 of the first report submitted to the Committee.

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

260. Concerning application of these articles of the Convention, the Colombian State confirmed its compliance in paragraphs 55 to 60 of the first report submitted to the Committee.

261. In addition, article 100 of the Colombian Constitution provides:

“Aliens in Colombia shall enjoy the same civil rights as Colombian citizens. Nevertheless, for reasons of public order, the law may impose special conditions on or nullify the exercise of specific civil rights by aliens.

Similarly, aliens on the territory of the Republic shall enjoy the guarantees granted to citizens, except for such limitations as are established by the Constitution or by law.

Political rights are reserved for citizens, but the law may grant aliens resident in Colombia the right to vote in municipal or district elections and referendums.”

262. Indeed, the progress made in Colombia as regards aliens’ right to freedom has extended to the opportunity for aliens to take part in elections as regulated by Act 1070 of 31 July 2006, whose articles 1, 4, 5 and 6 state that:

“Article 1. Aliens resident in Colombia may vote in municipal and district elections and referendums in the place where they last established their domicile.

[...]

Article 4. Aliens resident in Colombia must register with the National Civil Registry within the time periods prescribed by law for the registration of identity cards by Colombian nationals, by presenting their resident alien's identity card.

Paragraph 1. The National Civil Registry must register aliens resident in Colombia in separate lists, with a view to compiling unified national information and to preparing the respective electoral roll (...)

Article 5. Aliens resident in Colombia and aged eighteen (18) and over are entitled to vote in municipal and district elections and referendums if they meet the following requirements:

- (a) Holding a residence visa in accordance with the relevant regulations;
- (b) Being able to show at least five (5) years' continuous and uninterrupted residence in Colombia;
- (c) Holding a resident alien's identity card;
- (d) Being registered on the appropriate electoral roll;
- (e) Not presenting any of the disqualifying conditions specified by the Constitution and laws.

Article 6. Aliens resident in Colombia will have the same encouragements as Colombian citizens to avail themselves of the rights the present Act affords."

263. This freedom of migrant workers is also reflected in their having the same rights as regards equality, employment, education, housing and residence as nationals. Colombia is thus a country whose doors are open to travellers of different nationalities for purposes that may include business, residence, asylum, employment, education and tourism, and despite the security warnings given to travellers by the media and some Governments, the internal situation in the country affords full freedom and security to live and travel.

264. Where arbitrary imprisonment or detention is concerned, it is important to recall that detailed information on this was provided in point II, letter H of the present report.

265. In addition, regarding application of article 16 of the Convention, the Human Rights Section of the National Police has notified the measures adopted by that institution, namely:

(a) Statement of doctrine and institutional parameters to prevent illegal detention in police procedures, taking account of developing jurisprudence guaranteeing the exercise of the right to freedom as determined by the Constitutional Court in its rulings T-847 of 2000 and C-720 of 2007. These rulings have had a bearing on aspects such as:

- (i) Temporary holding rooms;
- (ii) *Detención transitoria* (detention not exceeding 36 hours) and *conducción* (detention not exceeding 24 hours);
- (iii) Transportation of those arrested or detained;
- (iv) Arrest as a police resource and judicial procedure;
- (v) Police treatment of aliens;

(b) Determination of "illegal detention and improper use of police facilities as temporary holding areas" as a risk factor, regarding which oversight activities are being carried out by the 83 human rights offices of the National Police, involving in particular visits to police facilities and training and awareness activities relating to the legal basis for detention as set out in the jurisprudential and doctrinal framework;

(c) Ongoing dialogue with the Protection Coordinator of the International Committee of the Red Cross (ICRC) to evaluate and generate actions for improvement in respect of detention and the use of police facilities as holding centres, taking the reports submitted in the performance of his mission as the starting point. Three meetings on the subject were held with Dr. Guilhem Ravier over the course of 2010.

**7. Article 16 (paragraphs 5 to 9), articles 18, 19 and 20: Right to procedural guarantees; prohibition of imprisonment, deprivation of authorization of residence and/or work permit and expulsion merely on the ground of failure to fulfil a contractual obligation**

266. Concerning application of these articles of the Convention, the Colombian State confirmed its compliance in paragraphs 61 and 62 of the first report submitted to the Committee.

267. Where the right to procedural guarantees and article 20 of the Convention are concerned, it is important to recall that detailed information on the subject was provided in chapter II, section H of the present report.

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

268. Concerning application of these articles of the Convention, the Colombian State confirmed its compliance in paragraphs 63 and 64 of the first report submitted to the Committee.

269. On this subject, it is important to note that no authority in Colombia is empowered to retain, confiscate or destroy the identity documents of Colombian nationals or aliens.

270. The legal basis for this can be found in article 23 of Act 962 of 2005, which states:

“Article 23. Prohibition on retaining documents. (Amending article 18 of Decree 2150 de 1995, which will now read:

Article 18. Prohibition on retaining documents. No authority may retain any person’s identity card, alien’s identity card, passport, driving licence, criminal record certificate, military passbook or any other personal document. If a person is required to provide identification, they will meet this requirement by displaying the relevant document. Retention of such documents as a condition of entrance to any public or private premises is forbidden.)”

271. It should likewise be noted that Decree 2465 of 2010 included the passport in the category of identity documents, with article 1 stating:

“Article 1. Definition. The passport is the travel document identifying Colombians abroad. Consequently, any Colombian travelling outside the country must be furnished with a valid passport, without prejudice to the provisions of current international treaties and commitments.”

272. Article 17 of the same decree provides:

“Article 17. If any alien holds a Colombian passport without being entitled to do so, the document will be retained, cancelled and handed over to the competent judicial authority; the same procedure will be followed when a case of identity theft is demonstrated, following the criminal complaint lodged by the interested party.”

273. In summary, article 23 of Act 962 of 2005 applies to the retention of identity cards and other identity documents while article 17 of Decree 2465 of 2010 applies to Colombian passports held by aliens not entitled to them.

274. Accordingly, the criminal laws establish the chain of custody over material evidence for documents found by an authority to be either forged or wrongfully possessed and to be instrumental in the commission of an offence, and their seizure as material evidence is carried out in accordance with the protocols laid down for this so that they can be handed over to the Public Prosecution Service. For any document to be confiscated, a confiscation order is drawn up and signed by the bearer of the document and the judicial police official retaining it.

275. Collective expulsion measures are not applied. Any migrant worker subjected to an expulsion order is able to apply to his or her consulate for legal or financial assistance.

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

276. Concerning application of these articles of the Convention, the Colombian State confirmed its compliance in paragraphs 65 to 70 of the first report submitted to the Committee.

277. Migrant workers and members of their families enjoy the same rights as Colombian nationals; this treatment is of the utmost importance in building a law-governed social State.

278. Accordingly, and given that the law is general, impartial and abstract in nature, Colombia, as a country that respects the principles contained in its Constitution and in international instruments to which it is party, protects on an equal basis all the rights and guarantees of all workers, without any discrimination, in accordance with the provisions of International Labour Organization conventions and recommendations on the rights of migrant workers, and especially the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The relevant provisions relating to the right to work are contained in articles 25, 26 and 27 of the Constitution.

279. Articles 10 and 11 of the Substantive Labour Code establish the equality of workers and the right to work: “All workers are equal before the law, enjoy the same protection and guarantees and, consequently, any legal distinction between workers on the grounds of the intellectual or physical nature of work, its form or its remuneration is abolished, and everyone has the right to work and is free to choose a profession or occupation in accordance with the provisions of the Constitution and the law.”

280. This being so, any person who enters into an employment relationship on Colombian territory must be enrolled by the employer, without any discrimination whatsoever, in the Comprehensive Social Security System (health, pensions and occupational hazards), which guarantees the right to any medical attention that may be required.

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

281. Concerning application of these articles of the Convention, the Colombian State confirmed its compliance in paragraphs 71 to 73 of the first report submitted to the Committee.

282. If we understand by “migrant worker” anyone who is going to carry out, is carrying out or has carried out a remunerated activity in a State of which they are not a citizen, within the meaning of the present Convention, it should be explained that the National Civil Registry does not have access to information that would enable it to characterize these workers and their families for the purpose of issuing identity documents. However, the Registry issues these documents to all citizens who are entitled to them, in accordance with

the Constitution and the law, without distinction of any kind on grounds of sex, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, nationality, age, economic status, property, civil status, birth or any other condition.

283. Thus, in compliance with the provisions of article 44 of Decree Law 1260 of 1970, all births taking place in Colombia are recorded in the civil register of births, as are the births abroad of children whose parents are Colombian, or one of whose parents is Colombian by birth or by adoption, and children born to aliens resident in the country, if one of the interested parties so requests.

284. Likewise, in accordance with article 109 of the same Decree Law 1260 of 1970, identity cards are issued to children and adolescents aged over 7 and under 18 provided that their birth has been so registered and, in cases where both parents are aliens, that the latter can show they were domiciled in Colombia at the time of the birth. Identity cards are renewed when their holders turn 14.

285. Lastly, in accordance with Legislative Act 1 of 1975, an identity card is issued to Colombian citizens once they have reached the age of 18, whether they are Colombian by birth or by adoption.

286. Against the background of the above, the present report contains information on identity cards (*cédulas de ciudadanía*), identity cards for under-eighteens (*tarjetas de identidad*) and the registration of births by Colombian consulates abroad, and information on identity cards issued to Colombian citizens by adoption.

287. The report on identity cards is based on the statistics consolidated in the Identification System and the figures given are for cards produced and sent out to the consulates at which the applications were made.

288. The statistics reported both for births registered at Colombian consulates between 2009 and 2010 and for identity cards processed by Colombian consulates between 2009 and 2010 are taken from the information consolidated in the databases of the National Civil Registry and in the manual information reported by the Identity Card Section regarding identity cards dispatched to each of the Colombian consulates around the world.

289. Considering the above, a descriptive and statistical description of each of these variables follows.

**a. Identity cards (*cédulas de ciudadanía*)**

290. Production of the latest-generation identity card (yellow with holograms) began in November 2000. Pursuant to the technological modernization programme undertaken by the National Civil Registry and by virtue of the provisions of article 3 of Act 220 of 1995, as successively amended by Acts 486 of 1998, 757 of 2002 and 999 of 2005, identity cards in older formats (laminated white and plastic-treated brown) began to be renewed in 2003.

291. The identity card application procedure for Colombians abroad is carried out through consulates, which prepare the necessary material and send it to the National Civil Registry. Once the cards have been produced, the Registry sends them out to the consulates where they were applied for.

292. Between November 2000 and January 2011, the National Civil Registry produced and sent out to consulates 711,696 latest-generation identity cards for citizens who had made their applications abroad. There are currently 38,148 applications at the production stage, 15,360 at the reception and checking stage and 9,697 that have been received and are awaiting processing. The details per consulate and per year are given in the following table:

**Processing of documents at consulates**

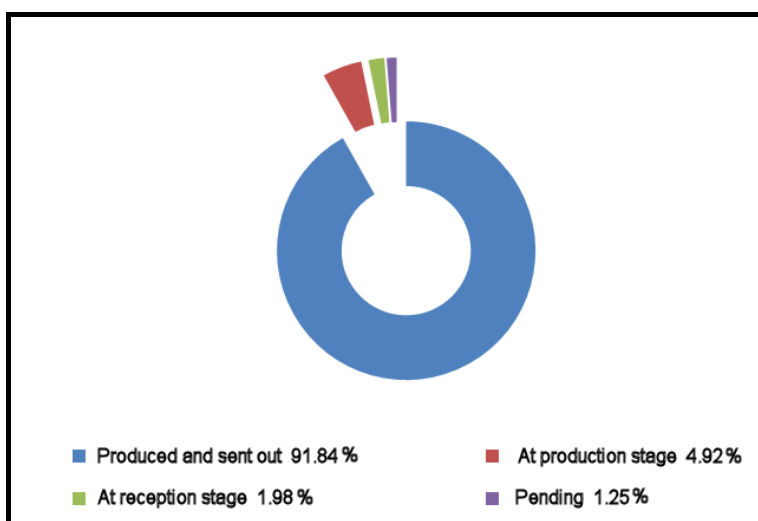
*Processing of documents at consulates*

Situation as of 31 January 2011

Produced and sent out	711 696
At production stage	38 148
At reception stage	15 360
Pending	9 697
<b>Total</b>	<b>774 901</b>

*Source:* Safran-Morpho – Ing. Herbert Moreno / Reception of Material Section / Identity Card Issuance Abroad Section.

**State of processing of identity cards applied for at consulates**



*Source:* Safran-Morpho – Ing. Herbert Moreno / Identity Card Issuance Abroad Section.

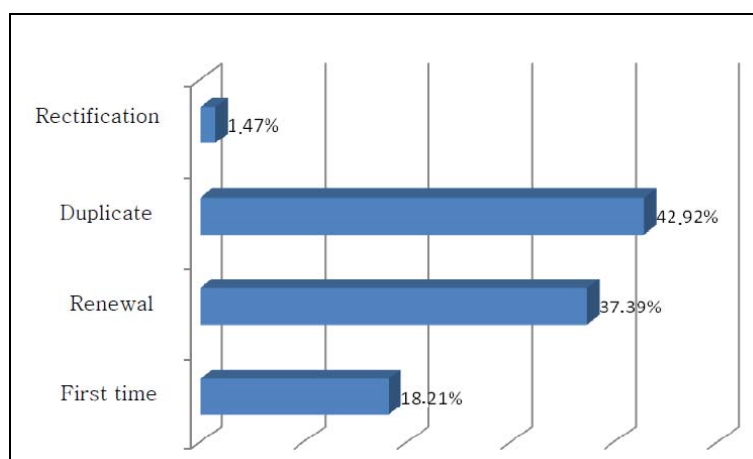
293. By application type, the documents produced and sent out break down as follows:

**Identity cards applied for at consulates, by application type**

<i>First time</i>	129 595
Renewal	266 128
Duplicate	305 482
Rectification	10 491
<b>Total</b>	<b>711 696</b>

*Source:* Safran-Morpho – Ing. Herbert Moreno / Identity Card Issuance Abroad Section.

### Identity cards applied for at consulates, by application type



Source: Safran-Morpho – Ing. Herbert Moreno / Identity Card Issuance Abroad Section.

294. Colombians by adoption are issued with identity cards on the basis of their naturalization card or authenticated copy of the resolution of registration by virtue of which the Colombian State, as represented by the Minister of Foreign Affairs, has authorized naturalization or registration of that person as Colombian by adoption, accompanied by certification of the oath of allegiance taken before the competent authority. Since 1999 the Ministry has issued identity cards to 648 citizens who have obtained Colombian nationality in this way.<sup>12</sup>

#### b. Identity cards for under-eighteens (*tarjetas de identidad*)

295. The production process encompasses the issuance and delivery of identity cards for under-eighteens, both in the pink paper format for minors aged 7 to 13, which are issued immediately upon application, and likewise those in the latest format, with a two-dimensional barcode and AFIS technology, which are for adolescent minors aged 14 to 17 and are centrally manufactured. Table 3 shows the number of such identity card applications handled in Colombian consulates in each of 2009 and 2010.

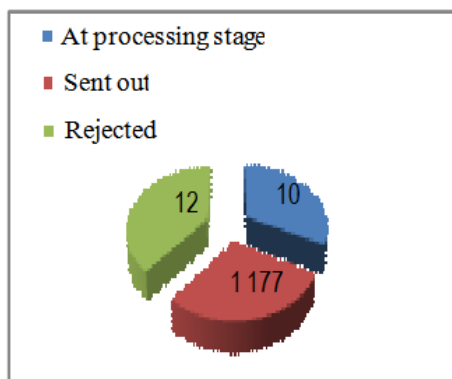
#### Statistics on applications for identity cards for under-eighteens handled by Colombian consulates in 2009 and 2010

	Identity cards ages 7–13	
	2009	2010
At processing stage	10	47
Sent out	1 177	2 129
Rejected	12	9
<b>Total</b>	<b>1 199</b>	<b>2 185</b>

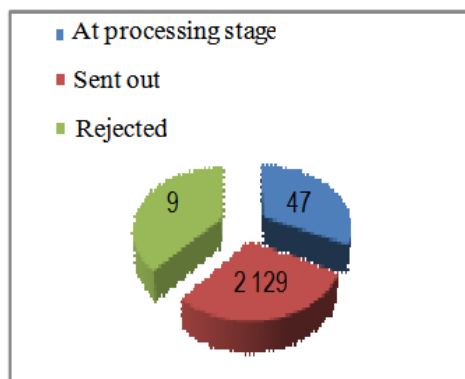
Source: Safran-Morpho – Ing. Nelson Barbosa / Identity Card Section – Dra. Ma. Victoria Tafur / 22 February 2011.

<sup>12</sup> Source: Safran-Morpho - Ing. Herbert Moreno / Identity Card Issuance Abroad Section, 2011.

**Figure 1. ID cards ages 7–13 in 2009**



**Figure 2. ID cards ages 7–13 in 2010**



Source: Safran-Morpho – Ing. Nelson Barbosa / Identity Card Section – Dra. Ma. Victoria Tafur / 22 February 2011.

**c. Civil registration of births**

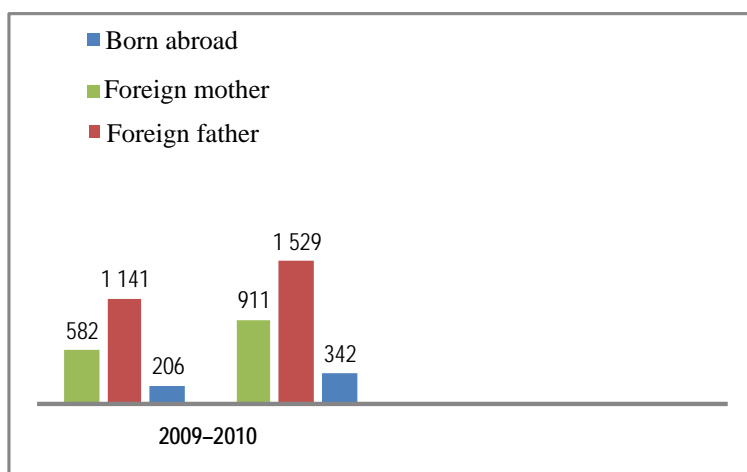
296. Table 4 gives figures for the registration of births by Colombian consulates in 2009 and 2010 separately.

**Statistics on births registered by Colombian consulates in 2009 and 2010**

Year	2009	2010
Born abroad	342	206
Foreign father	1 529	1 141
Foreign mother	911	582

Source: Safran-Morpho – Ing. Nelson Barbosa / Identity Card Section - Dra. María Victoria Tafur / 22 February 2011.

**Births registered, 2009–2010**



Source: Safran-Morpho - Ing. Nelson Barbosa / Identity Card Section - Dra. María Victoria Tafur / 22 February 2011.

297. Statistics on documents produced and sent out to consulates by country from 2000 to January 2011 are attached (annex 7).



298. In addition to the above, the Committee should note that, in relation to article 30 of the Convention, education for migrants is not a subject to which particular reference is made in the legislation of the Ministry of Social Protection (MPS). However, all education access standards and strategies are designed to meet the needs of all children and young people in the education system without discrimination of any kind.

299. One of the actions provided for in the sectoral plan “Quality education, the road to prosperity” for the 2010–2014 period is the narrowing of divides in preschool, basic and secondary education access and stay-on rates. The idea is that all students should be able to exercise their right to education irrespective of their background and their social, economic and cultural situation.

300. In accordance with the above, all children and young people in Colombia, including the children of migrant workers, can benefit from access to education on a basis of equal treatment with nationals.

301. Article 28 of the Children and Adolescents Code (Act 1098 of 2006) states:

“Children and adolescents have the right to good-quality education. The State shall be required to provide this for one year at preschool level and nine at the basic education level. Education shall be provided free of charge in State institutions in accordance with the terms set out in the Constitution. Anyone refusing to accept a child in a public education establishment shall be subject to a fine of up to 20 times the minimum wage.”

302. Furthermore, a bilateral agreement has been signed with Ecuador, a neighbouring country accounting for large numbers of migrants. This agreement was approved by Act 1203 of 4 July 2008, implementing the Permanent Statute of Migration between Colombia and Ecuador, signed in Bogotá on 24 August 2000. For the purposes of compliance with the Convention, this Statute states in the relevant articles:

“Article 12. Migrants shall have, in general, the same civil rights, guarantees and obligations as nationals.

Article 13. The competent national authorities shall periodically identify the main settlements of migrants who own real estate and/or work in agriculture, cattle raising, construction or the like, with a view to helping them regularize their residency status.

Article 14. National adult and youth literacy programmes shall include migrants.

Article 15. The authorities responsible for migration, aliens, etc., shall provide all necessary facilities for irregular migrants to legalize their situation in the receiving country, enabling them to obtain the appropriate visa there upon presentation of the requisite application and documentation.

Article 16. Visas issued under the terms of this Convention will also cover the migrant’s spouse or a permanent companion recognized under the domestic legislation of the receiving country, children under 18, and lineal ascendants.”

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

303. Concerning application of these articles of the Convention, the Colombian State confirmed its compliance in paragraphs 74 to 77 of the first report submitted to the Committee.

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

**1. Article 37: Right to be informed before departure of the conditions of admission to the State of employment and of their remunerated activity**

304. Concerning application of this article of the Convention, the Colombian State confirmed its compliance in paragraph 78 of the first report submitted to the Committee.

**2. Articles 38 and 39: Right to be temporarily absent without effect upon authorization to stay or work; right to liberty of movement and freedom to choose one's residence in the territory of the State of employment**

305. Concerning application of these articles of the Convention, the Colombian State confirmed its compliance in paragraph 79 of the first report submitted to the Committee.

306. Nonetheless, it is important for the Committee to be aware that aliens or migrant workers holding temporary work visas in Colombia may enter and leave the country as often as they wish, but periods of absence must not exceed 180 days continuously, as the visa will lapse if this happens.

307. Likewise, aliens or migrant workers holding residence visas may enter and leave the Colombian State provided they are not absent for more than two years continuously, as the visa will lapse if this happens.

308. Foreign workers are informed of these conditions when they register their visas to obtain their alien's identity card.

309. Concerning the right of migrant workers to choose their employment and place of residence, it is important to stress that they enjoy the same guarantees as Colombian nationals except where they wish to engage in regulated professions such as engineering, medicine, etc., in which case they are required to carry out homologation of their professional qualifications and apply for the relevant visa enabling them to carry out the activity concerned.

310. It is also important to emphasize here that migrant workers are guaranteed the right to reside in any city in Colombia. That is, the Colombian State places no restrictions on migrant workers' right to reside where they wish.

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

311. Concerning application of these articles of the Convention, the Colombian State confirmed its compliance in paragraphs 80 to 83 of the first report submitted to the Committee.

312. As indicated in relation to application of article 26 of the present Convention, political rights such as the right to form associations and trade unions are provided for by articles 38 and 39 of the Colombian Constitution.

313. Article 388 of the Substantive Labour Code, as amended by article 10 of Act 584 of 2000, provides:

“Article 388. Conditions for executive committee members:

In addition to the conditions laid down in the articles of association, a precondition for membership of a union executive committee is membership of the union concerned; failure to meet this condition will invalidate the election.

In no event may a majority of executive committee members be foreign nationals.”

314. With respect to Committee recommendation No. 2 regarding compliance with articles 40, 41 and 42 of the Convention, the Colombian State wishes to provide information on the measures taken by the National Civil Registry concerning the right to vote of foreign residents in Colombia and the right of Colombian nationals resident abroad to vote and seek election, as follows:

**a. Voting by foreign residents in Colombia**

315. Article 100 of the Colombian Constitution provides that foreigners in Colombia are to enjoy the same civil rights as are granted to Colombians; it also provides that political rights are reserved for Colombian nationals, but the law may grant aliens resident in Colombia the right to vote in municipal or district elections and referendums.

316. Pursuant to the provisions of the Constitution, Act 1070 of 31 July 2006 was passed to allow aliens resident in Colombia to vote in municipal and district elections and referendums in the place where they last established their domicile.

317. Article 2 of the Act provided that resident aliens could elect district and municipal mayors, district and municipal councils and local district and municipal administrative boards.

318. Likewise, in compliance with article 4 of the Act, aliens resident in Colombia must register to vote with the National Civil Registry within the time periods prescribed by the Act, by presenting their resident alien’s identity card to the electoral official.

319. On the basis of the registration that resident aliens have carried out with the electoral official by presenting their resident alien’s identity card issued by the Administrative Department of Security (DAS), the National Civil Registry is to prepare the corresponding electoral rolls in accordance with paragraph 1 of article 4 of Act 1070 of 2006.

320. The Act referred to also lays down the requirements that aliens resident in Colombia must meet to exercise the right to vote, which include being aged 18 or over, having been resident in the country for at least five years uninterruptedly, holding a resident alien’s identity card, being registered in the respective electoral roll and not being disqualified for any reason.

321. Act 1070 of 2006 was applied for the first time in Colombia in the regional elections for governors, deputies, mayors and local councillors of 28 October 2007. Pursuant to this, Resolution 0373 of 31 January 2007, passed by the National Civil Registrar, regulated the registration of aliens resident in Colombia to exercise the right to vote in the elections specified above.

322. Article 1 of the Resolution established a registration period for aliens running from 1 March 2007 to 21 May 2007, during which resident aliens could register with the special, municipal and auxiliary registries throughout the country and thereby have their names added to the resident aliens’ electoral roll, enabling these citizens to vote.

323. Circular 0023 of 15 February 2007, issued by the National Civil Registrar, lays down standards of transparency, impartiality and objectivity for the resident aliens’ registration process.

324. In all, 1,500 applications for registration were made during this registration period for resident aliens in Colombia, of whom only 1,240 persons were ultimately included in the electoral roll following cross-checking of information and reports by DAS. They exercised their right to vote at polling stations set up for the purpose.

325. In the regional elections for governors, deputies, mayors and local councillors of 30 October 2011, the National Civil Registrar issued Resolution 0871 establishing the electoral timetable for the elections of 30 October 2011. This timetable stipulated that both Colombian nationals and resident aliens had to register with their identity cards during a period running from 23 February 2011 to 22 May 2011.

326. Resolution 0872 issued by the National Civil Registrar also regulated the registration of identity cards by both Colombian nationals and resident aliens for participation in the elections of 30 October 2011.

**b. Voting by Colombian nationals living abroad**

327. According to the provisions of articles 171 and 176 of the Colombian Constitution and article 116 of Decree No. 2241 of 1986, the Colombian Electoral Code, Colombian citizens resident in other countries are entitled to vote in elections to the Colombian Congress at the embassies, consulates and other premises made available for the purpose by the Government of Colombia. They may also vote in elections for the Special International Constituency and the Andean Parliament.

328. Under Decrees 3903 and 4297 of 8 and 5 November 2009, respectively, the national Government empowered Colombian ambassadors and consuls accredited to other States to set up polling stations on their respective diplomatic and consular premises or at locations authorized in advance by the National Civil Registry.

329. With a view to safeguarding the rights of Colombians resident abroad and improving their conditions in every respect, article 176 of the Constitution, as amended by article 1 of Legislative Act 1 of 2003, created the International Special Constituency, which is entitled to elect one representative to the Chamber.

330. This representative is to be elected solely on votes cast abroad by citizens resident in other countries.

331. In the elections to the Colombian Congress held on 14 March 2010, once counting had been completed by the election committees responsible, presided over by the National Electoral Council, and all appeals had been resolved, a total of 36,696 votes were found to have been cast. The candidate for the Social Party of National Unity obtained 11,442 of these and thus took his seat as representative of the Special Constituency of Colombian Communities Abroad.

332. For the elections to the Colombian Congress, the Andean Parliament and the Special International Constituency held on 14 March 2010, the National Civil Registry allowed identity cards to be registered in Colombian embassies and consulates abroad from 19 October to 13 November 2009.

333. Likewise, 199 voting stations were set up in Colombian embassies and consulates in 58 countries so that Colombians living abroad could vote, and 70,000 citizens registered.

334. According to the electoral roll of Colombians abroad, 402,000 Colombians are entitled to vote. The countries with the largest numbers of potential voters are the United States, the Bolivarian Republic of Venezuela, Spain, Ecuador and Canada.

**4. Articles 43, 54 and 55: Principle of equality of treatment with nationals of the State of employment in relation to the issues indicated; equality of treatment as to protection against dismissal, unemployment benefits and access to public work schemes and alternative employment; equality of treatment in the exercise of a remunerated activity**

335. Concerning application of these articles of the Convention, the Colombian State confirmed its compliance in paragraph 84 of the first report submitted to the Committee.

336. In addition, as indicated in articles 25, 27 and 28 of the Convention, the relevant provisions on the right to work are reflected in articles 25, 26 and 27 of the Colombian Constitution and in articles 10 and 11 of the Substantive Labour Code, which establish the equality of workers and the right to work:

“All workers are equal before the law, enjoy the same protection and guarantees and, consequently, any legal distinction between workers on the grounds of the intellectual or physical nature of work, its form or its remuneration is abolished, and everyone has the right to work and is free to choose a profession or occupation in accordance with the provisions of the Constitution and the law.”

337. Meanwhile, as indicated in point II.A of the present report, Act 1429 of 2010 repealed the requirement of proportionality between Colombian and foreign workers and the obligation to present a certificate of proportionality as a prerequisite for applying for a work visa from the Ministry of Foreign Affairs.

338. Abolishing the quota or limitation on the recruitment of aliens to work in Colombia has expedited visa issuance and has made it easier for migrants to establish themselves in the Colombian labour market and for employers to recruit as many aliens as they deem necessary to carry out their activities and meet their corporate objectives, since for employment quota purposes such workers are treated as nationals.

**5. Articles 44 and 50: Protection of the unity of the families of migrant workers and reunification of migrant workers with their families; consequences of death or dissolution of marriage**

339. Concerning application of these articles of the Convention, the Colombian State confirmed its compliance in paragraphs 85 to 87 of the first report submitted to the Committee.

**6. Articles 45 and 53: Enjoyment of equality of treatment for members of the families of migrant workers in the indicated aspects and measures taken to guarantee integration of children of migrant workers in the local school system; right to freely choose a remunerated activity for members of a migrant worker’s family**

340. Article 45 of the Convention provides for the families of migrant workers to have access to vocational guidance and training institutions and services, and this is consistent with CONPES document 3603, referred to earlier, and to the requirement for a plan of action for the implementation of psychological, social, legal and occupational assistance programmes by the Ministry of Foreign Affairs with the support of the Colombian Institute of Family Welfare (ICBF) and the Presidential Council for Women’s Equity (ACPEM).

341. In addition, though, article 45, letter (c), establishes a right of access to social and health services for the families of migrant workers. Where social services for children and adolescents are concerned, article 4 of the Children and Adolescents Code (Act 1098 of 2006) states that the Code applies to all children and adolescents in the country, whether Colombian or foreign, and to nationals who are outside the country and those with dual nationality, when one of them is Colombian. The purpose of the Code is to guarantee the

full and harmonious development of children so that they can grow up in their families and communities in an environment of happiness, love and understanding where an appreciation of human equality and dignity prevails, without discrimination of any kind (see also chapter I of the present report for related information).

**7. Articles 46, 47 and 48: Exemption from import and export duties and taxes in respect of personal belongings; right to transfer earnings and savings from the State of employment to the State of origin or any other State; imposition of taxes and avoidance of double taxation principle**

342. Concerning application of these articles, under current rules goods imported by Colombian citizens are subject to much lower tariffs than goods imported for commercial purposes. However, the Ministry of Foreign Affairs is working with the relevant bodies, the National Tax and Customs Authority (DIAN), the Ministry of Trade, Industry and Tourism and the Ministry of Finance and Public Credit to reduce this tax and create the category of preferential household belongings to facilitate the return of Colombian citizens.

**8. Articles 51 and 52: Right to seek alternative employment in case of termination of the remunerated activity of migrant workers not permitted freely to choose their remunerated activity; conditions and restrictions applying to migrant workers who can freely choose their remunerated activity**

343. The Colombian State explicitly reaffirms its commitment to complying with this article to the best of its ability, bearing in mind the provisions of the Colombian Constitution and the law.

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

344. In Colombia, there is no employer's requirement for workers to take up residence in any particular place. Migrant workers are completely free to live and work where they choose.

345. Workers holding residence visas with authorization to work may terminate their employment without this affecting the validity of the visa, and indeed the holders of these visas can work, study, be self-employed or carry out other activities, which means that a migrant worker's employment or lack of it does not determine whether his or her residence status in Colombia is regular. This is not so with workers holding temporary work visas, the basis of which is that the alien's or migrant worker's presence in Colombia is tied to the job obtained. Points 9.7, 9.8, 9.9 and 9.10 of article 9 of Decree 4000 of 30 November 2004 lay down the conditions under which visas of this kind will lapse:

“At the written request of the holder:

- At the written request of whoever applied for the visa to be issued to the alien. This situation must be notified in writing to the holder and/or beneficiaries of the visa by the Ministry of Foreign Affairs, so that they can decide whether to make use of the right described in the second paragraph of the present article.
- Because the holder has changed employer or the activity authorized has terminated, except in the cases of temporary visas for spouses or permanent companions of Colombian nationals, temporary refugee or asylum-seeker visas and residence visas, where the appropriate change will be made or a new authorization issued, as required.
- If the conditions by virtue of which the alien obtained the visa change or cease to exist.”

346. For the events indicated above, the Colombian State has provided that the visa will lapse without the need for an administrative order or ruling. However, the alien will have 30 days following the event to apply for a new visa without the need to leave the country or obtain a safe conduct pass. Consequently, the alien or migrant worker may seek to obtain another visa of the same type with the same or a different employer without having to leave Colombian territory during the period stated.

347. Regarding expulsion from the country, it is pertinent to note that there are four forms duly established in Decree 4000 of 30 November 2004:

(a) Expulsion which may be appealed against through government channels (*vía gubernativa*) (article 104);

(b) Expulsion on national security grounds, against which there is no appeal (article 105);

(c) Expulsion at the request of aliens who are subject to an extradition order and notify their wish to return to the requesting country in order to answer the judicial summons. This measure is only applied after consultation with the Colombian Public Prosecution Service (article 82);

(d) Expulsion in enforcement of an accessory penalty imposed by a judicial authority. Appeals through government channels are not permitted (article 106).

348. Regarding the way administrative expulsion procedures are initiated, Colombia can confirm that these rigorously meet the standards of due process and the right of defence. Expulsion procedures are initiated methodically by issuing the order for a migration status check. This is followed by the opening of an administrative migration procedure based on the findings of the report on the status check, which is notified to the alien. A free and voluntary statement by the alien of his or her position at an administrative hearing is decreed to constitute priority evidence for the procedure. This is the point in the proceedings when aliens can exercise their right to defence by stating all their arguments and introducing any documents they consider relevant. A properly grounded decision is taken on the basis of the factual and legal arguments and the evidence submitted and gathered by the migration authority. The decision is enforced by an authority legitimately delegated for this purpose.

349. As part of the basic counselling the situation merits, aliens are informed of the appeal procedures that can be followed via government channels to contest the decision, the authority they have to apply to, and their own rights. Such appeals have suspensive effect, i.e., once they have been presented, the aliens are provided with a safe conduct pass allowing them to remain in the country until their administrative situation has been resolved. If the appeal goes against them, they are provided with a safe conduct pass to leave the country as an expellee.

350. The decision to expel an alien is taken when he or she commits one of the faults listed in Decree 4000 of 30 November 2004, regulating migration. These are:

(a) Failing to comply with the deportation decision within the time limit specified in the safe conduct pass to leave the country, or returning to the country before the expiry of the ban imposed therein or without the appropriate visa;

(b) Being recorded in the files of the competent authorities as having facilitated the entry of aliens on false promises of a contract, visa or entry or residence documents;

(c) Having been sentenced in Colombia to a term of imprisonment without expulsion from Colombian territory having been stipulated as an accessory penalty;

(d) Having documents fraudulently identifying them as a national of Colombia or another country.

351. On this subject, it is important to mention the power available to the migration authority when dealing with an alien who represents a threat to national security, as previously defined in Colombian legislation, which is to apply expulsion without any right of appeal through government channels. Although this measure cannot be appealed, it may only be applied to aliens who have engaged in activities that jeopardize national security, public order, public health, public peace or public security, or when there is intelligence information indicating that they represent a threat to national security, public order, public security or public peace or when the Colombian State has been informed by a foreign authority that a conviction has been handed down or an arrest warrant issued for the persons in that country for ordinary offences, or that such persons are listed by Interpol.

352. The decision to carry out expulsion in this way, as provided for in article 105 of the current migration law, must in all cases be properly founded, and is a tool of the State to preserve national sovereignty and the constitutional order that must be respected by other States. It is also given constitutional support by article 100 of the Constitution, which states that while aliens enjoy the same civil rights as are granted to Colombians, the law may nullify or attach special conditions to the exercise of particular civil rights for reasons of public order.

353. In addition to the above, there is another way for aliens to be expelled from the country, which is when their extradition has been requested by their country of origin and they express the wish to appear before its authorities. In this case, the Colombian State may proceed with expulsion and handover to the authority of the requesting country, always provided this is to the satisfaction of the Government, to which end the Colombian Director of Public Prosecutions may suspend enforcement of any warrant of arrest for the purpose of extradition, or order the release from detention of the person whose extradition is requested.

354. To comply with the expulsion order, the alien may only enter the country after the expiry of the entry ban, which may have a duration of no less than five years. If a ban of more than 10 years is imposed, the Director of the organization or the Assistant Director of Alien Affairs must be consulted (annex 8).

#### **D. Part V of the Convention: Provisions applicable to particular categories of migrant workers and members of their families**

355. Concerning application of this group of articles in the Convention, the Colombian State confirmed its compliance in paragraphs 88 to 96 of the first report submitted to the Committee.

356. Likewise, in the present report, and in section A of chapter II in particular, the Government of Colombia has reiterated its wholehearted commitment to complying fully with the provisions of the Convention.

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

357. Concerning application of this group of articles in the Convention, the Colombian State confirmed its compliance in paragraphs 97 to 103 of the first report submitted to the Committee.



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

358. Migrant workers who enter the country as holders of a visa having a duration of over three months and requiring registration must carry this out with the migration authority, whose user assistance mechanisms will provide them with the information they request and indeed with the information they need for their residence in Colombia. Thus, although the migration rules contained in Decree 4000 of 2004 were duly published, the migration authority has set out to disseminate and publicize these rules to facilitate timely awareness and comprehension of them by migrant workers.

359. There is international cooperation as regards the sharing of migration information, but this is confined to figures and does not extend to private information on the entry of aliens, given the confidential nature of the files held by DAS.

360. Foreign consular services may be used by aliens as soon as they become subject to administrative proceedings. It should be noted here that it is often migrant or foreign workers themselves who choose not to avail themselves of this right, and indeed ask for the consulate representing them not to be notified.

361. Likewise, in the present report, and in point II.L in particular, the Government of Colombia has reiterated its wholehearted commitment to complying fully with the provisions of the Convention to which this article relates.

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

362. The present report (chapter II, section M *supra*) has reiterated the commitment of the Government of Colombia to complying fully with the provisions of the Convention to which this article relates.

**3. Articles 68 and 69: Measures aimed at the prevention and elimination of illegal or clandestine movements and employment of migrant workers in an irregular situation; measures taken to ensure that migrant workers in an irregular situation do not persist in this condition within the territory of a State party and circumstances to take into account in case of regularization procedures**

363. The present report (chapter II, section P *supra*) has reiterated the commitment of the Government of Colombia to complying fully with the provisions of the Convention to which these articles relate.

**4. Article 70: Measures taken to ensure that living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity**

364. In 2007, the Colombian State, acting through the Colombia Unites Us programme of the Department of Consular Affairs and Colombian Communities Abroad, undertook the task of creating a comprehensive migration policy. The goal of this policy is to deal comprehensively with the social, political, economic, cultural, legal and institutional phenomena associated with international migration. Accordingly, it aims to expand and uphold the scope of individual freedoms and basic capabilities, contributing to governance through consideration of the processes associated with migration as an essential part of foreign policy, on the basis of the parameters created by laws of constitutional rank and the defence of human rights.

365. The expansion of freedom refers to the explicit consideration of instrumental freedoms as part of economic and social policies, such as the creation of conditions to

ensure participation by citizens in decision-making processes that affect them, which includes the choice of participation mechanisms and extension of the scope of decision-making about personal movement, so that decisions about emigration, immigration and return can increasingly become free rather than being forced or induced.

366. The policy of the Colombian State with regard to migration phenomena is explicit and comprehensive and provides a stable basis for the coordinated action of the State in: (a) proper protection of the human rights of Colombians abroad, and (b) consistent treatment of aliens in Colombia.

367. Where migrants' rights are concerned, Colombia accepted international obligations under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, whereby the Colombian State has undertaken to adopt differentiated measures for the benefit of people who are on Colombian territory as migrants. Colombia is also committed to the Convention Relating to the Status of Refugees.

368. According to article 100 of the Colombian Constitution, aliens enjoy the same rights as nationals on Colombian territory. This premise is intended to guard against abuses of power committed against aliens or the vulnerable. In 2003, Act 800 was created to approve the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which supplements the Convention, and to provide assistance and protection to the victims of these crimes.

369. The provisions of the international human rights instruments ratified by Colombia extend to migrants present in Colombia. Aliens on Colombian territory enjoy the same rights as people with Colombian nationality, with some specific exceptions. Thus, under the international human rights treaties ratified by Colombia, the State is obliged to protect and guarantee the rights of everyone subject to its jurisdiction.

## **F. Subjects of concern, suggestions and recommendations of the Committee: training in and dissemination of the Convention, and participation of civil society**

370. Although the report has not been prepared in direct coordination with civil society, this has continued to play a fundamental and important role in the application of the Convention through actions, many of them civil society initiatives and others undertaken jointly, that have included the holding of seminars, forums and workshops with assistance from State bodies responsible for migration issues, addressing subjects encompassing both the actions undertaken by the country in relation to migration flows and the dissemination, explanation and application of the Convention.

371. Although the Convention has been disseminated among the different Colombian bodies whose functions and competences have a bearing upon its subject matter, there is no specific training programme for officials.

372. The Ministry of Social Protection signed an agreement with the International Organization for Migration (IOM) and the General Labour Confederation (CGT) to set up the Migrant Information and Support Centre (CIAMI) for the purpose of providing information on work and/or services outside the country and in Colombia relating to the subjects of international labour migration and social protection, the aim being to support regulated, decent migration and to oversee respect for human rights in origin, transit and destination countries.

373. Accordingly, the Ministry of Social Protection, in coordination with CIAMI-CGT, based in Bogotá, has continued with its campaigns of awareness-raising, guidance and

publicization of services and rights among potential Colombian migrants abroad and foreign migrants in Colombia by redesigning, publishing and publicizing documents containing information on the following subjects, which are distributed at CIAMI-CGT:

- (a) Canadian, Spanish and United States passports, with technical details and a variety of information on general aspects of these countries, visa application requirements and information about the Colombian embassy and consulates, among other things.
- (b) Charter of Migrants' Human Rights, the Advantages and Disadvantages of Migration.
- (c) Charter on International Migrant Women, Children and Families.

374. Joint implementation of information campaigns is intended to fill in gaps in people's knowledge about migration, promote regular migration and prevent [*sic*] migrants from knowing their rights and duties in both the home and destination countries and avoiding being drawn into human trafficking networks.

375. Similarly, as part of the "Technical assistance for the characterization of labour markets at the national level" project, the Ministry of Social Protection has continued to provide technical assistance to officials of the 32 territorial branches and two special offices of the Ministry around the country, with particular emphasis on border areas, where training has been provided in migration management and policy, migration instruments and agreements and migrants' human rights, with participation in some cases by officials from the Alien Affairs Branch of the Administrative Department of Security (DAS).

376. The Ministry of Social Protection also carries out inspection, oversight and enforcement of employment, labour and social security standards through the Labour Inspection, Monitoring and Control Unit, with local offices and labour inspectorates throughout the country.

377. The labour inspection, oversight and control system takes an intelligent preventive and proactive approach based on criteria of reliability and maximization of coverage and impact.

378. The Ministry's new inspection strategies centre on the establishment of management agreements whose purpose is to create collaboration commitments between workers and employers, by branch of economic activity and by firm, to raise standards of compliance with occupational requirements and stimulate a process of continuous improvement.

379. Other aims are to get closer to citizens, create a culture of conciliation in conflict resolution, improve the quality and timeliness of the services provided, increase coverage of the population served, expand the availability of human resources and achieve greater specialization in the work of inspectors and conciliators.

#### **IV. Final considerations**

380. All in all, the number of migrant workers in Colombia does not amount to 0.05 per cent of the whole population; however, it is important to reiterate once again that Colombia does respect the rights recognized in the Convention, and domestic legislation accordingly guarantees all the rights for migrant workers and their families enshrined in international law.

381. There have been no reports or complaints of employers abusing or ill-treating migrant workers holding visas issued by the Ministry of Foreign Affairs, nor have there been reports or complaints in State institutions about infringements of the rights of family members.

382. Lastly, Colombia is a country with high levels of emigration of its citizens, and a very large percentage of these emigrants are migrant workers in developed or highly industrialized high-income countries. Unfortunately, these destination countries are not an integral part of the Convention to which the present report relates.

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