



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

Distr.: General
26 January 2010
English
Original: Spanish

**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

Ecuador^{*}, ^{}**

* In accordance with the information transmitted to States parties regarding the processing of their reports, this document was not formally 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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International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Second periodic report of Ecuador, 2007–2009

I. Introduction

1. Ecuador, as a State party to the Convention, extends its greetings to the Committee and is pleased to submit its second periodic report, which covers the period from 2007 to 2009, in fulfilment of its obligations under article 73 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

2. The second report covers the changes that have occurred in the course of the structural reform and transition that began with the election of the economist Rafael Correa Delgado as President of the Republic of Ecuador. One change of major importance has been the promulgation of the country's twentieth Constitution, which was approved by referendum on 28 September 2008¹ and entered into force on 20 October 2008 at the time of its publication in issue No. 449 of the *Registro Oficial* (the official gazette).

3. This report provides an account of the steps taken to implement the Convention under the present Constitution, which takes a different approach to migration and the movement of persons and calls for an overarching change in structures and regulatory provisions. In accordance with the guidelines for the preparation of reports,² this report is divided into the following chapters: The chapter entitled "General information" is subdivided into: (a) "Background information"; (b) "The situation in Ecuador"; (c) "Characteristics and nature of migration flows"; (d) "Regulatory framework"; and (e) "National and local planning instruments". The chapter entitled "Specific provisions of the Convention" covers the implementation of the Convention and includes a description of institutional advances, actions taken and regulatory measures adopted. Chapter IV, entitled "Challenges and outlook", provides responses to the Committee's observations concerning the first report.

4. This analysis is based on a comprehensive approach to the protection of human rights in all areas of State activity. It therefore employs a holistic perspective and draws upon the observations, particularly with respect to migration issues, made by various international human rights bodies as its point of departure. This perspective has also permitted linkages to be identified among the observations conveyed to the Government of Ecuador by, in particular, the Committee on the Elimination of Discrimination against Women and the Committee on the Elimination of Racial Discrimination and in the course of the universal periodic review. This approach to the implementation of people's human rights reflects the commitment of the Government of Ecuador to a joint effort to address human rights issues relating to migration and the movement of persons on a comprehensive basis.

¹ The 2008 Constitution, which replaces the one promulgated in June 1998, was approved by 63.9 per cent of the vote (versus 28 per cent votes against its approval, 0.75 per cent blank ballots and 7.23 per cent null votes), according to the Supreme Electoral Tribunal.

² See "Guidelines for the periodic reports to be submitted by States parties under article 73 of the Convention" (CMW/C/2008/1) and the "Compilation of guidelines on the form and content of reports to be submitted by States parties to the international human rights treaties" (HRI/GEN/2/Rev.2/Add.1).

5. The Government of Ecuador views the concept of the movement of persons as an intrinsic, cross-cutting variable in the globalization process. Within this setting, the various stakeholders perpetuate inequalities and seek out opportunities against a backdrop of deepening inequities and discrimination at the global level and of systemic links between economic policy and the deteriorating status of the population. These relationships must be transformed into positive linkages.

6. For the purposes of this report, the following groups of people are regarded as being affected by issues relating to the movement of persons, regardless of their migratory status in administrative terms: (a) persons and their family members who leave a given jurisdictional district with the intention of settling elsewhere, whether temporarily or permanently; (b) persons and their family members who arrive in a given venue for the purposes of transiting through it or temporarily settling there; (c) persons who, as the result of any sort of human action whatsoever (violence, political decisions or other acts), seek refuge or protection in Ecuadorian territory; and (d) persons who, by reason of natural causes, need to move to another location.

7. The comprehensive political approach being taken to the issue of the movement of persons encompasses the various types of mobility that exist, the differing and specific needs, expectations, outlooks, capacities and potentials of the persons involved, and the many structural and circumstantial factors that trigger and influence such migratory movements. Each migrant is a subject of rights, a transnational participant in the human development process and a political actor capable of bringing about change throughout the corresponding migratory environment.

8. This comprehensive approach also entails the linkage of multisectoral responses within a historical and forward-looking territorial and trans-territorial framework. It therefore calls for coordination among countries, administrative levels and stakeholders.

9. The country and its various agents have gained experience in the area of emigration and have attained a certain degree of maturity in that respect. This provides it with a multidimensional perspective that serves as a good point of departure for consistent action in relation to immigration, transit and internal displacement, refugee and asylum issues, and the offences of human smuggling and trafficking.

10. This underscores the fact that, although the international community has generally approached migration issues from a labour-oriented perspective, this is not the only area in which it needs to move forward.

II. General information

A. Background information

11. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted by the General Assembly of the United Nations in resolution 45/158 on 18 December 1990. The chief aims of this instrument are to promote and, through its implementation in States Members, to guarantee the human rights of migrant workers and their families.

12. Ecuador is committed to these objectives and has incorporated the Convention's provisions into domestic law through the passage of bill No. R-23.129 of 18 October 2001, the new law's ratification by the executive in Decree No. 2120-A of 23 November 2001 and its publication in issue No. 471 of the *Registro Oficial* on 11 December 2001. The text of the Convention was then published in issue No. 133 of the *Registro Oficial* on 25 July 2003, once it had entered into force as an international instrument.

13. In November 2006, Ecuador submitted its initial report to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and, in December 2007, met with the Committee, which later issued its observations based on the report and the alternative report submitted by civil society. The Government of Ecuador has since drawn upon these observations as it works to improve its fulfilment of its obligations under the Convention.

B. The situation in Ecuador

14. Ecuador is located in north-eastern South America and has an area of 254,000 square kilometres. Its four regions (the coastal area, highlands, the Amazon rainforest and the Galapagos Islands) are divided into a total of 24 provinces.

15. It is a constitutional, democratic, sovereign, independent, unitary, intercultural, pluri-national, secular, decentralized Republic which upholds social justice and operates under the rule of law. Its paramount duties include guaranteeing, without discrimination of any kind, effective enjoyment of the rights laid down in the Constitution and international instruments, strengthening national unity in diversity, and ensuring the fulfilment of its inhabitants' right to a culture of peace and to overall security and their right to live in a democratic, corruption-free society.³

16. According to the National Institute of Statistics and Censuses (INEC), the results of the 2001 census indicate that: (a) the country had a population of 12,479,924 inhabitants and will have an estimated population of 14,204,900 by 2010⁴ (50.3 per cent female and 49.7 per cent male); (b) the mestizo population is one of the largest ethnic groups in the country, and there are 604,900 Afro-Ecuadorians and mulattos (5 per cent of the total population). Organizations representing this sector of the population estimate its total number of members at between 900,000 and 1,200,000 persons, however. Approximately 830,418 persons belong to indigenous groups; and (c) Kichwa is spoken by 499,292 persons. Under today's Constitution, Spanish, Kichwa and Shuar are official languages; the other ancestral languages are official for the indigenous peoples of Ecuador.

17. Based on the unsatisfied basic needs (UBN) index, in 2006 a total of 45.74 per cent of the Ecuadorian population was poor, and 12.86 per cent of those people were indigent. The full employment index for the economically active population was 48.37 per cent in 2008, or just slightly higher than the 48.17 rate recorded for 2007, according to the central bank's economic report. Unemployment rose to 7.5 per cent in 2008 from its 2007 level of 6.3 per cent. The rate of substandard employment or underemployment was 45.13 per cent in 2008, as compared to 38.8 per cent in 2007 and an underemployment rate of 43.76 per cent.

C. Characteristics and nature of migration flows⁵

18. Ecuador is a country of origin, a transit country, a destination country and a country of return for migrants. It is very difficult to compile reliable data that can be disaggregated

³ Political Constitution of Ecuador, 2008. Title I on constituent components of the State; chapter one, on fundamental principles, articles 1 and 3.

⁴ www.inec.gov.ec (visited on 10 May 2009).

⁵ Susana López Olivares, "Nota Temática 1: Estimación de personas ecuatorianas emigrantes en el mundo 2008", National Migration Secretariat (SENAMI)-International Organization for Migration (IOM), 30 January 2009. A summary of the information on migration flows that is provided in this document is offered here.

by the characteristics and types of mobile population groups owing to the insufficiency or absence of records and the scattered distribution of those records that are available.⁶

19. The Government has no centralized information agency, but efforts have been made to address this situation. Data on Ecuadorians living abroad were compiled for the first time in the fourth population census and the fifth housing census of 2001, which covered the period from November 1996 to November 2001. In 2005, the Special Inter-Agency Commission on Migration Statistics in Ecuador (CEIEME)⁷ was established, and in 2007 CEIEME developed a strictly demographic measurement of emigration. The National Secretariat for Migrants (SENAMI) is currently working on the design of an information system. The Ministry of Justice and Human Rights plans to develop human rights indicators in 2010, and the movement of persons is one of the areas to be covered. These efforts will strengthen the country's response capacity and provide information that can be used to improve public planning.

20. Permanent, temporary and seasonal emigration is generally motivated by economic and employment considerations. SENAMI studies indicate that, as of 2007, 18 per cent of the national population⁸ and 38 per cent of the economically active population⁹ were emigrants. It is estimated that, as of 2008, around 2,500,000 Ecuadorians were living outside the country,¹⁰ mainly in the United States, Spain and Italy (see annex 3: Statistics, C1).

21. The National Migration Directorate (DNM) records arrivals and departures at ports, airports and border crossings. DNM files indicate that 804,987 Ecuadorians left the country and 760,575 entered it in 2007. In 2008, a total of 817,526 left and 768,045 entered. In the first half of 2009, 393,254 Ecuadorians left the country and 388,018 arrived. Over those three years, the percentages of men and women leaving and arriving were roughly the same, with minimal variations being recorded from year to year. Most of the people leaving the country were of working age (15–49 years). Figures on voluntary returnees have been kept since 2008. Ecuadorians leaving the country tend to outnumber those entering. This trend was observed in 2001–2007 and appears to have continued (see annex 3: Statistics, C2).

22. The scale of emigration from Ecuador is also reflected in the level of remittances.¹¹ As of 2005, remittances totalled approximately US\$ 2 billion and were thus the second-

⁶ Agencies that have such records on file include the National Migration Directorate; the Immigration Directorate of the Ministry of the Interior; the National Institute of Statistics and Censuses (INEC); the Ministry of Foreign Affairs, Trade and Integration; the Central Bank of Ecuador (BCE); the General Directorate for Civil Registration, Identification and Certification (SENPLADES); and the Supreme Electoral Tribunal (TSE).

⁷ The Special Inter-Agency Commission on Migration Statistics in Ecuador (CEIEME) compiles statistics and constructs indicators on migration. It is composed of representatives of 15 government agencies concerned with migration-related issues and is overseen by INEC.

⁸ According to INEC figures, Ecuador's total population as of 2007 was 13,682,302.

⁹ According to INEC figures, in 2007 the country's economically active population numbered 6,548,108 persons. Over one third of the workforce is engaged in the production of goods and services or is available for employment in the production sector.

¹⁰ Susana López Olivares, "Nota Temática 1: Estimación de personas ecuatorianas emigrantes en el mundo 2008", SENAMI-IOM, 30 January 2009, p. 2. This figure has been reached by drawing on a range of sources, including the statistical offices of the countries concerned, census figures, consular estimates, and academic studies by the author and others.

¹¹ The Central Bank of Ecuador is the official source for statistics on remittances. See annex 5, sections a, b and c, for trends in remittances in 2008 and 2009.

largest item in the balance of payments current account, after merchandise exports (US\$ 10 billion).¹²

23. An 8.6 per cent decrease in remittances was seen between 2007 (US\$ 3,087,900,000) and 2008 (US\$ 2,821,600,000), however, owing to the world financial crisis, among other factors. In 2008, most remittances (approximately 95.3 per cent of the total) came from the United States (46.8 per cent), Spain (41 per cent) and Italy (4.7 per cent).¹³

24. In the first quarter of 2009, the regional distribution of remittance receipts in Ecuador was as follows: 38.5 per cent went to the coastal area, 31.2 per cent to the highlands, 28.3 per cent to the southern part of the country, 1.9 per cent to eastern Ecuador, and 0.01 per cent to the Galapagos.¹⁴ The provinces receiving the most remittances were Guayas Province, in the coastal area, Pichincha Province, in the highlands, and Morona Santiago Province, which is also in the coastal portion of the country.

25. A comparison of the first half of 2008 (US\$ 1,471,200,000) with the first half of 2009 (US\$ 1,164,200,000) shows that there has been a 20.9 per cent reduction in the level of remittances being sent to Ecuador. Broken down by region, the reduction registered in 2009 was as follows: 27.1 per cent in the coastal region, 24.1 per cent in the highlands, 2.9 per cent in the south, and 39.2 per cent in the eastern portion of the country. The level of remittances in the Galapagos has held steady.¹⁵

26. Generally speaking, a majority of immigrants come from the bordering nations of Colombia and Peru, but the number of immigrants coming from China and Cuba is on the rise. DNM reports that a total of 941,800 foreigners entered Ecuador and 899,203 departed from it in 2007. In 2008, foreign arrivals totalled 991,467 and departures totalled 949,415. In the first half of 2009, 464,583 foreigners arrived and 446,468 departed. Over those three years, the percentages of men and women leaving and arriving were roughly the same, with minimal variations being recorded from year to year. Most of the people leaving the country were of working age (15–49 years). The number of foreigners entering the country tends to be greater than the number of departures (see annex 3: Statistics, C2).

27. Ecuador has become the top destination country for refugees in Latin America, and this is especially the case for Colombian refugees. This population requires international protection and special humanitarian assistance.¹⁶ As of end-2007, according to the figures compiled by the General Directorate for Refugees (DGR) of the Ministry of Foreign Affairs, Trade and Integration, 20,000 people have been given refugee status and there are another 36,915 applicants. The annual statistics compiled by DGR indicate the following: in 2007, 2,941 refugee visas were granted; in 2008, the figure rose to 4,703 and, in 2009, it stood at 15,927 (10,603 under the expanded registration system). There are many people in Ecuador who need international protection. This is particularly true of many Colombians

¹² Susana López Olivares, “Nota Temática 3: Emigración en la economía ecuatoriana”, SENAMI-IOM, p. 6.

¹³ Susana López Olivares, “Nota Temática 2: Emigración ecuatoriana en cifras”, SENAMI-IOM, p. 21.

¹⁴ For further information, see www.eumed.net/cursecon/ecolat/ec/2009/gvd2.htm. Galo Viteri Díaz: “Ecuador: migración y remesas I semestre 2009” in *Observatorio de la Economía Latinoamericana*, No. 119, p. 2, 2008.

¹⁵ Galo Viteri, op. cit., note 14 supra.

¹⁶ The largest group of refugees comes from Colombia. Colombians account for 91.6 per cent of the applications for asylum submitted to the Government of Ecuador, according to the country report of the Office of the United Nations High Commissioner for Refugees (UNHCR), *La población colombiana en necesidad de protección internacional residente en el Ecuador. Encuesta 2007* (Colombians residing in Ecuador in need of international protection, 2007 survey).

who do not apply for refugee status because they fear that they will be deported or will have to meet stricter eligibility requirements. These people therefore find themselves in a highly vulnerable position. The expanded registration procedure has been designed to respond to these needs (see paragraph 195 and annex 3: Statistics, C3).

D. Regulatory framework

28. The situation in Ecuador provides a classic example of contemporary trends in the movement of persons. At this point the Government of Ecuador is trying to introduce a different concept of migration at the global level. This position was outlined by President Rafael Correa Delgado in an address he delivered to the General Assembly of the United Nations, in which he denounced existing migration policies as being clearly discriminatory, exclusionary and in violation of the human rights of migrants, in general, and of “undocumented” migrants, in particular. The implementation of this new approach, in line with Ecuador’s Constitution, is a political priority of the highest order.

29. The Constitution, in effect between June 1998 and October 2008, guarantees all people within Ecuador, without discrimination, the exercise and enjoyment of their rights, especially the human rights laid down in the Constitution and in international instruments ratified by Ecuador. These instruments are part of the country’s legal system and take precedence over other laws. The Convention is one such instrument (arts. 7 and 163).

30. Equality before the law and non-discrimination in the enjoyment of rights, freedoms and opportunities are basic, overarching principles. Accordingly, foreigners have the same rights as Ecuadorians, with the limitations on such matters as political rights and on entry into, transit through, and residence in Ecuador being established in the Constitution and other laws (arts. 13 and 23). No limitations may be placed on rights such as the right to due process (art. 24) and the right to decent work and to receive fair compensation for that work that is sufficient to meet the needs of the worker and his or her family (art. 35).

31. General guarantees had been established in the past, but the issue of the movement of persons is a cross-cutting consideration in the Constitution that entered into force in October 2008. The current Constitution guarantees the fundamental rights of migrants and sets forth comprehensive provisions governing emigration, immigration, refugee status, asylum, transit, internal displacement, and human smuggling and trafficking. These advances have been made possible by a democratic, participatory process that has been coordinated among State institutions, social movements and representatives of Ecuadorians residing abroad, all of which took part in the framing of the new Constitution.

32. Seven of the nine titles in the Constitution include a total of 58 articles dealing with the movement of persons. There is also a specific section on the subject in Title II, which concerns human rights.

33. Title I, which deals with the constituent components of the State, expressly recognizes the historical, social and cultural contributions made by Ecuadorians living abroad. The definition of Ecuadorian nationality has also been expanded to include, in addition to Ecuadorians born within the national territory, persons born abroad to an Ecuadorian father or mother and their descendents to the third degree of consanguinity, persons born abroad to a father or mother who is Ecuadorian by naturalization, and members of indigenous peoples present in border areas. Nationality is not forfeit by reason of marriage or its dissolution. As was also true of the 1988 Constitution, the present charter recognizes the double nationality of Ecuadorians who have acquired another nationality¹⁷

¹⁷ According to the EUROSTAT report entitled *Statistics in Focus 108/2008*, as of 2006, Ecuadorian

and of foreigners who become naturalized citizens of Ecuador. By decision No. PGE58 of 28 June 2007, the Office of the Procurator-General ruled that Ecuadorians residing abroad who became naturalized or nationalized in another country before the 1998 Constitution came into force are entitled to Ecuadorian nationality and do not have to meet any other requirement for that purpose, since that right is established in the Constitution of Ecuador (arts. 4 and 6–8).

34. The enjoyment of rights is guaranteed, without discrimination (art. 3). Under the Constitution, foreigners in Ecuador have the same rights and duties as Ecuadorians do (art. 9), with the exception of certain limitations regarding political rights (art. 63) and the acquisition of real estate or concessions in national security areas or protected areas (art. 405).

35. In the text of Title II, which deals with people's rights, there is no mention of "citizens", "nationals" or "foreigners". The rights of all persons are upheld, as is the principle of the equality of all persons, without any form of discrimination (including discrimination based on a person's criminal record or migratory status) whatsoever (art. 11). Advertising or publicity that incites violence, discrimination or racism is prohibited (art. 19). It establishes people's right to maintain their cultural identities, to take their own decisions as to their membership in one or more cultural communities and to make their choices known (art. 21). It also recognizes the right to engage in cultural and artistic activities (art. 22) and guarantees education without discrimination (art. 28). In addition to the individual right, the collective right of a community to not be the target of racism or any other form of discrimination on the basis of origin or of ethnic or cultural identity is recognized and guaranteed (art. 57). The corollary duty for Ecuadorians and, by extension, foreigners is to promote unity and equality in diversity and to respect and acknowledge ethnic and national differences (art. 83, paras. 10 and 14).

36. Working persons are guaranteed full respect for their dignity and the right to a decent life, fair remuneration, and a safe, freely chosen or accepted form of employment (art. 33). One of the first acts of the current Government was to secure the Constituent Assembly's approval of Mandate¹⁸ No. 8, which concerns labour rights. This mandate calls for the elimination of outsourcing, labour intermediation and the engagement of labour on an hourly basis. It also prohibits other forms of labour casualization and thus redounds to the benefit of all of the country's inhabitants. The right to social security is the inalienable right of all persons and is a paramount duty and responsibility of the State. The social security system is governed by the principles of solidarity, mandatory membership, universal coverage, equity, efficiency, subordination, sufficiency, transparency and participation and is designed to meet individual and collective needs (art. 34).

37. The section dealing with the rights of persons and groups belonging to high-priority sectors recognizes the right to migrate. It goes on to state that no one shall be regarded as illegal on the basis of their migratory status. It also calls for the following measures to support the rights of migrants living abroad, regardless of their migratory status: (a) comprehensive protection and assistance, particularly for persons who have been deprived

citizens were the fourth-largest population group among those acquiring citizenship in the 24 European Union countries on which figures were compiled; 92 per cent of them acquired Spanish nationality, which means that, in Spain alone, 19,477 people will have dual nationality.

¹⁸ The Constituent Assembly framed the current Constitution in representation of the Ecuadorian people's sovereignty. Given the nature of its assignment, it was endowed with full powers, which it exercised through constituent mandates, decisions and directives. See articles 1 and 2 of the *Reglamento de Funcionamiento de la Asamblea Constituyente de 11 de diciembre del 2007* (rules of procedure of the Constituent Assembly of 11 December 2007), published in the supplement to issue No. 236 of the *Registro Oficial* of 20 December 2007, and annex 1.1: Constituent Mandate No. 8.

of their liberty; (b) promotion of links with the country; (c) guarantees for family reunification and voluntary return; (d) maintenance of the confidentiality of data vis-à-vis authorities of transit and destination countries; and (e) protection of transnational families and the rights of their members (art. 40).

38. The rights to asylum and refuge are recognized in the Constitution, which upholds the principle of non-refoulement, guarantees emergency humanitarian and legal assistance, and provides that persons seeking asylum or refuge shall not be subject to criminal penalties by reason for their entry or presence in the country in an irregular situation.¹⁹ It also holds out the possibility that a given group may be awarded refugee status under exceptional circumstances (art. 41). Any arbitrary displacement of persons is prohibited. Persons who have been displaced have the right to receive emergency humanitarian assistance and protection from the authorities (art. 42).

39. Children and adolescents are entitled to information about absent parents or family members, provided that it is not prejudicial to their well-being (art. 45). Measures are to be adopted to provide special protection for children and adolescents from any form of labour or economic exploitation. They are to be shielded from any sort of violence, ill-treatment, sexual or other exploitation and are to be protected from negligence that could give rise to such situations. Persons under 15 years of age may not work; policies designed to phase out child labour are to be implemented, and priority attention is to be given to children and adolescents in the event of disasters, armed conflicts or other types of emergencies (art. 46).

40. The following rights and freedoms are recognized and guaranteed: to move freely within the national territory and to choose one's place of residence, as well as to enter and leave the country freely, with this latter right being regulated by law (only a judge having jurisdiction in the matter may prohibit a person from leaving the country). Foreigners may not be turned back or expelled to a country in which their life, liberty, safety or security or that of their family members are endangered by reason of their ethnic identity, religion, nationality, ideology, membership in a given social group or political views. The expulsion of foreign groups is prohibited; cases of migration must be dealt with on an individual basis. Life is inviolable. The principle of the inviolability of the person encompasses the right to a life free of violence and the prohibition of torture, forced disappearance, and cruel, inhuman or degrading treatment or punishment. Slavery, exploitation, servitude, and human smuggling and trafficking are prohibited. No person may be deprived of his or her liberty because of debts (art. 66, paras. 3, 14 and 29).

41. The various types of families are recognized, and the different types of family structures, including a transnational family structure, are therefore protected (art. 67). The Constitution provides for the promotion of responsible motherhood and fatherhood and specifies the obligations of mothers and fathers, particularly when they are apart from their children. The State is enjoined to protect mothers, fathers and heads of household in the fulfilment of their obligations and to devote special attention to families who have become dispersed for whatever reason (art. 69).

42. The rights to protection of the person provide for guarantees of due process, including such measures as the assistance of a translator and the obligation to inform the corresponding consular representative if a person is detained (arts. 76 and 77). Ecuadorians may not be extradited under any circumstances and are to be judged under the laws of Ecuador (art. 79). Special, expedited procedures are to be established for the prosecution

¹⁹ D.E. 2201/1992, article 13, says that no person may be turned back at the border, returned, expelled, extradited or subject to any measure whatsoever that would oblige him or her to return to a territory where his or her physical well-being or personal freedom is at risk.

and punishment of perpetrators of, inter alia, hate crimes and crimes committed against children, adolescents, youths and persons who stand in need of special protection (art. 81).

43. Participatory rights include Ecuadorians' right to vote, if they so choose, when they are abroad (art. 62) in elections for the offices of President and Vice-President, national representatives and overseas district representatives. Ecuadorians residing abroad are eligible for election to any post. Foreigners residing in Ecuador are eligible to vote provided that they have resided legally in the country for at least five years (arts. 63 and 118). Overseas electoral districts are to be defined by law (art. 116).

44. The participatory rights outlined in article 61 of Title III are broadened in Title IV, which deals with participation and the structure of government. This title establishes the right of Ecuadorians living abroad to participate in public affairs (art. 95); to present, either individually or collectively, their proposals and projects to officials at all levels of government (art. 102); to be consulted, (and the relevant electoral body is therefore authorized, when requested to do so by Ecuadorians living abroad, to call a referendum on matters relating to the State of Ecuador that affect them) (art. 104); to occupy public posts and perform public functions (art. 61); to belong to political parties and movements, which may be attached to the corresponding overseas district (art. 109); to join or resign from them freely and to take part in arriving at all of the decisions they reach (arts. 108 et seq.).

45. Nationals and foreigners holding political rights may oversee government actions and may revoke the mandate they have conferred upon popularly elected officials (art. 105).

46. National Equality Councils, composed of an equal number of representatives of civil society and of the State, have been mandated to participate in the framing, mainstreaming, application, monitoring and evaluation of public policies concerning a range of topics, including the movement of persons (art. 156).

47. The Citizens' Participation Council, which is involved in ensuring transparency and carrying out social monitoring, is open to Ecuadorians living abroad (art. 210).

48. The objectives set out in Title VI, which deals with development, include promoting Latin American integration, establishing a strategic position for Ecuador at the international level, and protecting and promoting cultural diversity while preserving mechanisms for cultural reproduction and exchange (art. 276, paras. 5 and 7). The objectives of the provisions concerning economic sovereignty include the achievement of a balanced development process in the country and the economic, social and cultural integration of its various regions and rural areas, as well as integration between rural and urban areas (art. 284). Incentives are also to be provided in order to encourage migrants to repatriate their savings and assets so that savings may be directed towards quality investments in production (art. 338). The State is entrusted with safeguarding the labour rights of Ecuadorian workers living abroad and with establishing arrangements with other countries for the regularization of such workers (art. 329).

49. Title VII, which deals with the well-being of Ecuadorians, provides for the establishment of the National System for Equity and Social Inclusion and its linkage with the National Development Plan as a means of ensuring the effective application of the 2008 Constitution (art. 340). The State is entrusted with establishing the conditions necessary for the comprehensive protection of the country's inhabitants throughout their lives (art. 341). Ecuador, as a land of peace (art. 5), guarantees people's safety by means of integrated policies and actions designed to ensure peaceful coexistence, promote a culture of peace and prevent violence, discrimination and the commission of offences and crimes (art. 393).

50. Voluntary contributions from Ecuadorians living abroad are one of the sources of funding for the social security system (art. 371), and the State is responsible for encouraging them to participate in the system on a voluntary basis.

51. The section of the Constitution dealing with the population and its mobility provides for two core policies in this regard: (a) demographic policies designed to help to achieve a territorially and intergenerationally balanced form of development and to protect the environment and ensure the population's safety within a framework of respect for diversity and for people's right to self-determination (art. 391); and (b) a migration policy overseen by the State through the body responsible for coordinating the various levels of government. The State is charged with designing, adopting, applying and evaluating policies, plans, programmes and projects in this connection. It is also responsible for coordinating the work of its agencies with the measures adopted by other Governments and civil society organizations working in this area at the national and international levels (art. 392).

52. Title VIII, which covers international relations, sets out the principles to be upheld by the State in its dealings with the international community and provides for the promotion of mechanisms for preserving, safeguarding and giving expression to the diverse nature of different societies while rejecting racism, xenophobia and all other forms of discrimination. It advocates the principle of universal citizenship, the free movement of all of the planet's inhabitants and the gradual elimination of the differentiation between nationals and aliens as a force of change in the unequal relations that now exist between countries. It calls for respect for human rights, particularly those of migrants, and provides for the full exercise of those rights through the fulfilment of the obligations assumed under international human rights instruments signed by Ecuador (art. 416, paras. 5–7).

53. At the regional level, Ecuador sees the alignment of national laws — with emphasis on labour, migration, cross-border, environmental, social, educational, cultural and public health regimes and rights — as a strategic objective to be pursued in accordance with the principles of progressiveness and non-regressivity. The State is entrusted with fostering Latin American and Caribbean citizenship, the free movement of persons in the region, the implementation of policies designed to guarantee the human rights of refugees and persons living in border areas, and protection of the human rights of Latin Americans and Caribbeans in transit and destination countries within a common framework of solidarity and complementarity (art. 423, para. 5).

54. Given these new paradigms as set forth in the Constitution, steps must be taken to create a legal and regulatory framework for the movement of persons as a matter of urgency. Such a framework for the regulation of legal practices in this connection and their linkage to the corresponding institutional structure is required in order to do away with the limitations placed on such rights by secondary national statutes, which give rise to *de facto* institutional practices that contravene the rights enshrined in the Constitution.²⁰ To this end, the Government of Ecuador has begun to frame a bill which will set out a comprehensive code or law on the movement of persons.²¹ The text of this bill is being developed on a

²⁰ These instruments include: the implementing regulations for the Monitoring and Private Security Act, which prohibits foreigners from working in private security firms and which is being used to disregard the labour rights of foreigners who are hired and then dismissed on the basis of this instrument; Presidential Decree No. 1181 of 17 July 2008; the Marginal Urban and Rural Housing Regulation, article 3 of which states that only Ecuadorians are eligible for the benefits concerned; the implementing regulations for the Migration Act, which is invoked by the immigration authorities to deny Ecuadorian nationality to children of Ecuadorians residing abroad who have not obtained Ecuadorian identity papers, despite the provisions set out in the Constitution. (On 13 July 2009, the Office of the Ombudsman of Ecuador responded to this latter situation by issuing resolution No. 001-CNMH-PBA-2009 on the rights of children born to Ecuadorians abroad to enter and leave Ecuador, in which it called upon the authorities to take immediate action in this regard.)

²¹ The question as to whether this secondary statute will take the form of a law or of a code is still under

participatory, intersectoral and coordinated basis by SENAMI and the Ministry of Justice and Human Rights. This process provides for participation by and inputs from public agencies concerned with related issues, civil society, Ecuadorians living within the country and elsewhere, immigrants, refugees and their families, and international cooperation agencies. The Convention will be one of the main pillars for this code, which will constitute a systematic, comprehensive, internally consistent, integrated body of law that is aligned with national and international human rights standards. This initiative is open to proposals from all sectors of society and will include a validation process involving workshops in various regions of the country.

55. As part of the preparatory work for the development of this bill, the Government of Ecuador, through SENAMI and the Ministry of Justice and Human Rights, arranged for a comprehensive legislative survey to be conducted. The survey covers international statutes, constitutional law, secondary legislation, and national and international case law on the movement of persons (emigration, immigration, asylum, refugee status, Stateless persons, forced displacement, internal migration, human trafficking and the smuggling of migrants).²² It also includes a review of the main plans, bills and local ordinances on the subject (see annex 2: Legal survey).

E. National and local planning instruments

1. National instruments

56. *National Development Plan.* Ecuador has an urgent need for a technical and political instrument in which national interests, objectives, priorities and resources can be brought to bear in pursuit of long-term sustainable and sustained social and economic development. The current Government is working to create a culture of participatory development planning and, to this end, has established a decentralized national system for participatory planning and has strengthened the National Secretariat of Planning and Development, the agency with oversight responsibility.

57. The main product of the above process is the 2007–2010 National Development Plan, which was launched in 2007 and incorporated into the framework of the Constitution in 2008.²³ The Plan constitutes a binding instrument for the public sector. Public policies, programmes and projects, State budget planning and execution, investments and allocations of public funds, and the distribution of powers between the central government and the decentralized autonomous governments must therefore all conform to its provisions.

58. The Plan establishes 12 national objectives, which are underpinned by the premise that human beings and human rights are the cornerstones of development and that the capitalist, commercial, economic agenda is secondary to human and social considerations. With regard to migration issues, the Plan is designed to ensure that Ecuadorians outside the country are covered by all national public policies, to mitigate the adverse effects of migration, to provide comprehensive assistance for migrants and their families, and to harness the opportunities that migration affords for migrants, their families, their communities and their country.

discussion.

²² This survey has been classified on the basis of the requirements of a technical paper prepared by a number of civil society organizations which is being discussed with SENAMI. The paper is entitled “Proceso para la elaboración e implementación del Proyecto de Ley Integral de Movilidad Humana” (development and implementation of a comprehensive law on the movement of persons).

²³ Constitution, Title VI: Development System, Chapter II: Participatory Development Planning (arts. 279 and 280).

59. In November 2009, the National Secretariat of Planning and Development submitted an updated version of the Plan for approval by the National Planning Council. The updated text is aligned with the new Constitution and the new term of office of President Rafael Correa and is coordinated with sector-specific agendas. The revised instrument has been given a new name: the National Plan for Well-Being, 2009–2013.

60. A greater degree of policy mainstreaming is apparent with respect to issues relating to the movement of persons, and Ecuador now has policies aimed at: fostering recognition and respect for sociocultural diversity and eliminating all forms of discrimination, including discrimination due to a person's migrant status (1.6); protecting and promoting the rights of Ecuadorians living abroad and the rights of foreign nationals in Ecuador and their various family structures (1.7); promoting conditions conducive to human security (3.7); creating conditions that facilitate migrants' reintegration within the workforce and production sector upon their return to Ecuador and protecting migrant workers (6.8); and promoting awareness, recognition and affirmation of the different sociocultural identities of Ecuadorians living outside the country (8.3).

61. *National Human Development Plan for Migrants.* SENAMI is the oversight agency for this plan. It is mandated by Executive Decree No. 150, published in issue No. 39 of the *Registro Oficial* on 12 March 2007, to define and implement migration policies that foster the human development of all stakeholders. SENAMI also serves as a liaison for migrant assistance, protection and development programmes. It has two core functions: (a) to liaise directly with the Office of the President in defining and implementing migration policies that foster the human development of all stakeholders; and (b) to oversee and coordinate the work of all stakeholders and agencies, whether public or private, concerned with migration issues at the national and international levels.

62. In line with the Government's commitment to participatory planning, SENAMI worked with various national and foreign organizations in drafting the National Human Development Plan for Migrants, 2007–2010. A strategic instrument for the design of Ecuador's migration policy, the Plan provides for a series of programmes and projects that will contribute to fulfilment of the goals established in the National Development Plan. By consulting with these parties, SENAMI was able to take the experiences of the various stakeholders into account in the design, dissemination, validation and technical production phases.

63. Great importance is attached to the need to mainstream migration issues in all State activities. The Plan employs a human development approach that recognizes the centrality of the person, the positive effects of migration, the co-responsibility of States, the importance of a comprehensive migration policy, and the need for public policies that reflect the multidimensional nature of migration. The initiatives provided for in the Plan are designed to provide comprehensive assistance to migrants that enhances their skills and potentials.

64. The Plan upholds the right to migrate, which is the right to free movement and to participation in an intercultural society. It is also designed to guarantee the right to remain, which is the right to personal development, and the right to a sustainable, voluntary return with dignity.

65. The objectives set out in the National Human Development Plan for Migrants are: (a) to develop in Ecuador, and encourage throughout the world, migration policies that are based on respect for and the exercise of the human, economic, social and cultural rights of all persons; (b) to generate and strengthen migrants' ties with their families and their countries; (c) to encourage Ecuadorians to remain in their country and to create conditions allowing for the sustainable, voluntary return of emigrants with dignity; (d) to foster human

development processes for migrants, their families and their communities; and (e) to promote intercultural exchange and universal citizenship.

66. The programmes accorded priority under the National Human Development Plan for Migrants include a plan to position and consolidate the comprehensive migration policy; the “Bienvenid@s a Casa” (Welcome Home) Plan; an assistance programme for migrants and their families; the Migrant Bank; and a programme to promote intercultural exchange and universal citizenship-building entitled “Todos somos Migrantes” (We are all migrants).

67. Its experiences in implementing the National Human Development Plan for Migrants, coupled with the need to mainstream the issue of migration in all State planning activities, have led SENAMI to plan a series of major changes²⁴ at various levels. One change of a practical nature will involve consolidating the various policies of different agencies into a single comprehensive State migration policy. This process will entail legal and administrative changes, which will take the form of a code or law on the movement of persons; political and administrative changes affecting the assignment of responsibilities and authority; and practical political changes that will have an impact on planning instruments such as the National Plan for Well-Being, and on planning agendas, including the Social Agenda. The aim of these changes is to delineate a comprehensive, consistent and legally-binding policy on migration, to establish an international migration policy architecture that will define areas of responsibility and authority in planning, executing, monitoring and evaluating such policies, and, ultimately, to harmonize existing legislation and regulations.

68. *Human rights planning.* The Ministry of Justice and Human Rights was established by Executive Decree No. 748, issued on 14 November 2007, to “spearhead the implementation of appropriate mechanisms for the dissemination of information on human rights and on related legal and procedural matters” (art. 11). Its mandate is to “guarantee access to justice in a timely, independent and high-quality manner, to ensure effective social rehabilitation, and to promote social peace and full respect for human rights by means of policies, programmes and actions coordinated with the different institutions linked to the country’s justice system”.²⁵ The Ministry fosters cross-cutting policies that guarantee full respect for human rights and works in conjunction with justice system officials to consolidate the institutional structure of the national public defence system.

69. In coordination with the Ministry of Foreign Affairs, Trade and Integration, the Ministry of Justice and Human Rights is charged with the nationwide implementation of all international instruments that establish human rights obligations for the State. It participates in drafting and validating the State party reports to be submitted to the committees and other human rights treaty bodies, brings their recommendations to the attention of public agencies and civil society organizations, and monitors compliance.

70. With a view to evaluating its efficacy, the Ministry of Justice and Human Rights assumed responsibility for coordination of the National Human Development Plan²⁶ in 2008. The Plan is currently undergoing revision.

²⁴ According to the terms established by the National Secretariat for Planning and Development, these changes represent conceptual redefinitions of development objectives that should make them more consistent with the Government’s plan. They also necessitate a redefinition of the sectoral policies established in the National Development Plan.

²⁵ The Ministry of Justice and Human Rights, Rules regarding process-driven organizational management, article 7.

²⁶ The National Human Development Plan was launched in 1998. It was conceived as a priority instrument for the democratic and participatory exercise of the human rights and fundamental guarantees of the citizens and communities of Ecuador. The Plan has been implemented through

71. *Foreign policy planning.* The National Plan for Foreign Policy, 2006–2020, was formulated on the basis of consultations with State agencies, civil society and academia led by the Ministry of Foreign Affairs, Trade and Integration in 2005 and 2006.

72. One of the Plan's objectives is to foster the development and full application of international law for the promotion and protection of the human rights of immigrants and emigrants and thus to improve their living standards. This goal is pursued through diplomatic efforts that include concluding agreements with transit and destination countries, fostering cooperation and encouraging bilateral and multilateral negotiations that will benefit migrants, contributing to the definition of policies conducive to the country's development, carrying out campaigns to raise awareness of the situation in destination countries, and liaising with State agencies, local authorities and civil society organizations.

73. *National Plan to Combat Human Trafficking, the Smuggling of Migrants, Sexual Exploitation, Labour Exploitation and Other Forms of Exploitation and Prostitution of Women, Children and Adolescents, Child Pornography and Corruption of Minors.* The drive to prevent kidnapping, the smuggling of migrants, sexual exploitation, labour exploitation and other forms of exploitation and prostitution of women, children and adolescents, child pornography, and the corruption of minors was declared a priority State policy by virtue of Executive Decree No. 1981 of 31 August 2004 and Executive Decree No. 1823 of October 2006. The decrees also provided for the formulation of a national plan of action, the establishment of a national commission to be composed of various public agencies,²⁷ and the creation of a technical secretariat. The National Commission subsequently drew up the National Plan of Action envisaged in the decree, which was published in issue No. 975 of the *Registro Oficial* on 12 October 2006.

74. In line with the National Development Plan, the National Plan of Action is designed to create conditions that will allow all persons, and especially children, adolescents and women, to fully exercise their rights without being at risk of falling victim to the aforementioned crimes. This objective is pursued through three core areas of action: (a) prevention; (b) investigation and punishment; and (c) protection and restitution of the rights of victims.

75. To strengthen and guarantee the implementation of the Plan, in the last quarter of 2008 the method of execution was redesigned and three subcommittees were created to assume responsibility for each of the Plan's three areas of actions. The National Commission is currently chaired by the Ministry of the Interior, although a transfer of this function to the Ministry of Justice and Human Rights is envisaged in the future.

76. *National Plan for the Eradication of Gender-Based Violence.*²⁸ This plan was created by Executive Decree No. 620, published in the *Registro Oficial* of 10 September 2007. It constitutes a State policy for the elimination of gender-based violence and has four components: (a) changes in discriminatory sociocultural patterns through awareness-raising programmes and campaigns; (b) a national information and record-keeping system for cases

specific operational plans designed to ensure fulfilment of its short-, medium- and long-term goals and the implementation of joint activities for the promotion and exercise of human rights in Ecuador in the areas of education and human rights, consumer rights, the rights of migrants, the rights of the elderly, the rights of Afro-Ecuadorians, the right to sexual diversity, and the right to employment.

²⁷ The Commission is composed of representatives of the Ministry of Justice and Human Rights, Ministry of Foreign Affairs, Trade and Integration, Ministry of the Interior, Police and Worship, Ministry of Education, Ministry of Labour Relations; Ministry of Tourism; Ministry of Economic and Social Inclusion, Ministry of Public Health, National Secretariat for Migrants (SENAMI) and the National Secretariat of Planning and Development.

²⁸ Understood to include physical, psychological, sexual, economic and social violence.

of violence; (c) a comprehensive protection system for children, adolescents and women who are victims of violence; and (d) prompt access to justice, without charge, for victims. The Plan is implemented by the Ministry of the Interior, Police and Worship.

77. *Equal Opportunities Plan.* Drafted by the National Council for Women (CONAMU),²⁹ the Equal Opportunities Plan, 2005–2009, was introduced as a State policy by Executive Decree No. 1207-A of 22 March 2006, published in issue No. 234 of the *Registro Oficial*. The Plan is designed to mainstream the gender perspective and gender equality and thus to protect and guarantee the exercise of the rights of women, children and adolescents.

78. The Plan encompasses four areas of action: (a) promotion and protection of women's participation in society and politics, the exercise of their citizenship, and democratic governance; (b) promotion and protection of the right to a life free from violence, the right to peace and health, sexual and reproductive rights, and the right to justice; (c) promotion and protection of cultural and intercultural rights and the right to education, quality of life and autonomy; and (d) promotion and protection of economic, environmental and labour rights and of the right of access to financial and non-financial resources. This latter component specifically recognizes migrant female workers as "subjects of rights", i.e., it recognizes the value of the work that women perform not only as producers and generators of value and wealth but also as empowered persons able to demand that their rights be respected.

79. In pursuit of the above goals, the State has been working to establish local networks for the promotion and protection of the human rights of migrant women, children and adolescents, especially those who are refugees or have been forcibly displaced. This work resulted in the creation, in 2009, and the subsequent expansion of the Colombian-Ecuadorian Network of Women's Organizations. The goals of the Network are to provide for women's basic needs and strategic interests by fostering their empowerment, to drive analysis and debate on the situation of women in border areas, and to formulate, on the basis of actual conditions, inputs for the new national agenda for women and the Equal Opportunities Act. The Network also works to mainstream the gender perspective at the local, national and international levels, as well as in the Round Table on the movement of persons³⁰ of the Metropolitan District of Quito, in the National Human Development Plan for Migrants developed by SENAMI, and in the agenda of the Andean Migration Network of the Andean Community.

80. *The 10-Year National Comprehensive Child and Youth Protection Plan.* A policy tool for the development of plans, programmes and projects to protect children and adolescents (2015), this plan covers actions that are prioritized on the basis of the Social Agenda, which is a public-policy instrument providing guidelines for the agencies forming part of the Decentralized National System for the Comprehensive Protection of Children and Adolescents. Within this system, the National Council for Children and Adolescents (CNNA) is the body responsible for policy definition, monitoring and enforcement. In cooperation with SENAMI, in November 2008 it embarked on the task of mainstreaming

²⁹ As provided in Executive Decree No. 1733, CONAMU is in a transitional phase and due to become the National Council for Gender Equality, in accordance with its constitutional mandate (arts. 156 and 157).

³⁰ A body established in September 2005 as a result of an inter-agency agreement concluded between the Ministry of Labour Relations and the Inter-American Observatory for Migrants' Rights (OCIM) to serve as a forum through which the various stakeholders involved in migration issues may participate in inclusive, transparent processes for the formulation of public policy on migration with a view to ensuring the enforceability of rights.

the right to free movement in the Social Agenda for Children and Adolescents, 2007–2010, with a view to highlighting the vulnerable position in which children and adolescents are placed when either they or their families are immigrants, emigrants or refugees. Steps have also been taken to restore violated rights. These efforts have led to: the creation of the Round Table on the Movement of Persons, which provides the system with a forum for consultations and proposals on the issue of the free movement of people; the production of a procedural manual for handling migration processes, forced displacements and refugee situations; and, as part of the process of building an international system for the protection of migrant children and adolescents, the provision of training, through CNNA, for 130 members of 40 Cantonal Rights Protection Boards in Quito, Loja and Manta, in procedures for assisting children and adolescents whose human rights have been threatened or violated because of their migrant status. No precise data on the number of unaccompanied and separated children and adolescents in Ecuador have been collected.³¹

81. *National Plan for the Prevention and Progressive Elimination of Child Labour.* Overseen by the Ministry of Labour Relations, this plan constitutes a State policy for the prevention and progressive elimination of child labour and was drawn up in conformity with the provisions of national and international legal instruments relating to child labour. The 2008 National Plan approved by the National Committee for the Progressive Elimination of Child Labour (CONEPTI) incorporates input from all bodies and institutions involved in children's and adolescents' issues, as well as those involved in workers' and employment issues, including the International Labour Organization (ILO). The Plan is aligned with the National Development Plan and the 10-Year National Comprehensive Child and Youth Protection Plan.

82. The Plan prioritizes actions to eliminate the worst forms of child labour — specifically, work by minors in rubbish dumps, mines, quarries, plantations, abattoirs, brickworks, brothels, places where gambling takes place and/or alcohol is sold, and domestic service — and to restore the rights of such children and adolescents. It encompasses a national programme for the elimination of child labour in rubbish dumps, plus pilot projects for the elimination of child labour in mines, banana plantations and domestic service. Various public and private organizations are involved.

83. *Plan Ecuador.* This plan originated as an alternative solution for sustainable peace and human development in the northern border region and was prompted by the adverse effects of Plan Colombia. It is based on a platform for comprehensive action for the northern border region that is underpinned by three guiding principles: (a) peace and cooperation as the basis for coexistence between States; (b) repudiation of external aggression, non-interference in the domestic affairs of other countries and sovereign equality in relations with neighbouring States; and (c) cooperation and co-responsibility in the fulfilment of development goals on the part of Ecuador's various State agencies and civil society organizations. The Plan follows the guidelines established in the National Development Plan and in international agreements. The institutional strategies for 2009 were to: (a) normalize life in the border region; (b) reinforce the State's presence in terms of public service coverage and quality; and (c) build a culture of peace rooted in citizen participation.

³¹ Bodies consulted: National Council for Children and Adolescents (CNNA), Special Police Department for Children and Adolescents, National Migration Directorate.

2. Local instruments

84. As part of their local planning and governance activities, municipalities have also adopted policies designed to protect migrant persons within their territorial jurisdiction. These are detailed below.

85. *Quito Metropolitan District Council. District Migration Plan (Pichincha Province, Quito Canton).* The Round Table on the Movement of Persons³² was created in September 2005 to provide the various stakeholders with a vehicle for participation in local processes for the formulation of public policy on migration with a view to ensuring the enforceability of human rights. On 17 September 2008, local authorities issued the Quito Declaration on the Movement of Persons, in which the various stakeholders undertook to promote, protect and guarantee the rights of migrant persons and families as a matter of public policy and to develop local regulations to that end. Subsequently, on 25 September 2008, with the support of the Round Table on the Movement of Persons, the Quito Metropolitan Council issued Metropolitan Ordinance No. 0271. Under the terms of this ordinance, a specific section on the promotion, protection and guarantee of the rights of migrant persons in the Quito Metropolitan district, which includes a district migration plan, was incorporated into the Municipal Code.³³

86. The District Migration Plan is a “planning instrument under constant review and revision in which the movement of persons is regarded as a social process involving people, cultural values, information, economic resources and other factors”.³⁴ It is designed to provide guidance for the local governance of emigration, immigration and refugee issues. Drawing on analyses indicating that a lack of systemized local information and limited knowledge of the problem at the institutional and community levels are the core problems, the Plan sets forth various actions, including the establishment of a “Casa del Migrante” (Migrant House) in the Quito Metropolitan District to serve as a centre for liaison with reception centres in the different zones of the Metropolitan District and, through the intermediary of the Metropolitan Observatory for Migration, with the Secretariat for Development and Social Equality.

87. *Municipality of Cuenca. Comprehensive Protection System for Migrants (Azuay Province, Cuenca Canton).* In April 2007, the Municipality of Cuenca opened a Casa del Migrante (Migrant House) to serve as a meeting place for migrants and their families and to contribute to the formulation of public policy as the lead agency in the construction of the Comprehensive Protection and Development System for Migrants and their Families in the canton of Cuenca. With the approval of the Ordinance on the Protection and Development of Migrants and their Families in November 2008, the organizational and operating regulations for the System took their final form. The System’s components include a social fund for the comprehensive protection and development of migrants and their families.

88. In 2009, September was designated as “Human Mobility Month”. Within the framework of this initiative, an open house entitled “Building a solidarity-based social economy” was organized, and a letter of intent was signed by the Ministry of Economic and Social Inclusion, SENAMI, the Fondo Ecuatoriano Popularum Progressio (FEPP), the Ministry for the Coordination of Social Development and the Migrant House of the Municipality of Cuenca for the construction of a solidarity-based social economic system in the canton that would entail the development of an institutional monitoring process, the establishment of an inter-agency network, the drafting of a cantonal plan for 2010 and the

³² Created under an inter-agency agreement between the Ministry of Labour Relations and the Inter-American Observatory for Migrants’ Rights (OCIM).

³³ The adoption of these instruments earned Quito recognition as a city of fraternity and solidarity.

³⁴ Article 1 of Ordinance 0271.

creation of an integrated solidarity fund for inter-agency services. Strategic partners in the initiative include the network of community mediation centres in the rural parishes of Cuenca. A procedural manual on migration, children and adolescents has also been produced.

89. *Municipality of Cañar. Cañar–Murcia Co-development Project (Cañar Province, Cañar Canton)*. This pilot project for the period 2006–2010 is overseen by SENAMI and implemented by the Municipal Council of Cañar. Its aim is to harness the potential benefits of migration for both the society of origin and the society of destination. The project is focused on improving overall living standards and development opportunities in Cañar, coordinating efforts to improve the living standards and the social and labour conditions of immigrants in Murcia, and facilitating employment in these two municipalities.

90. The main areas of action are: (a) support for the production apparatus through the Support Office for Entrepreneurship, which works to stimulate business initiatives by providing training programmes for young people in business and trade schools; (b) psychological and social assistance through the integrated local network for migrant support; (c) promotion of community tourism through the creation of a cantonal network of tour operators (three communities — San Pablo, Charón Ventanas and Chuchucán — are already equipped to manage tourist attractions, and in 2008 a further five communities received assistance in this area); (d) social communication concerning the project and current migration issues; (e) land management, embracing physical planning using a local information system (covering settlements, land-based production and geographic information) and the management of national resources as a basis for planning infrastructure works, services, environmental protection mechanisms, regulatory matters, the optimization of production, mining and economic activities, technology transfer and training, and methods of strengthening the production chain; and (f) strengthening the educational system by computerizing educational centres and creating a virtual community known as the Ecuadorian Education Network. In 2008, around 8,850 students signed up at 15 educational centres in outlying urban areas, and it is expected that 80 per cent of the canton's student population will have access by the end of 2010. Lastly, since migration has contributed to the restructuring of gender roles and to a related increase in female participation in economic and political life, women's empowerment has been a cross-cutting theme of the programme. At the administrative level, the municipality is set to establish the Department for Gender, Social Equality and Community Development and is working to create a cantonal council for women as well as parish committees for women.

91. *Municipality of Chunchi. Strategic Development Plan (Chimborazo Province)*. Chunchi ranks among the 20 cantons with the highest rates of emigration. Statistics published by the municipality³⁵ indicate that 7.9 per cent of the population has emigrated and 61 per cent of households have family members outside the country. This situation led the municipality to take the issue of migration into account in the formulation of its Strategic Development Plan, 2005–2009.

92. The municipal report covering 2008 and the first six months of 2009 expresses concern over the impact of migration on the family unit. The municipality therefore continues to run an integrated support and virtual communication centre for the children of emigrants (offering a canteen, psychological support, social work, tutoring, appropriate leisure activities and a virtual classroom) that provides support to an average of 200 children and young people each academic year.

³⁵ See www.ame.gov.ec/frontEnd/municipios/mainMunicipios.php?idMunicipios=196&idSeccion=7919, Municipality of Chunchi. This site was updated as of 13 August 2009.

93. These national and local instruments attest to the commitment and the political will with which the State has addressed the issue of the movement of persons on various fronts, as well as its endeavours to establish policies that are underpinned by respect for human rights. They also provide a structural framework for the practices, mechanisms, procedures and measures adopted to alleviate the situation of migrant women, victims of smuggling and of trafficking in human beings, especially women and children, and the migrant population overseas and to facilitate their return and reintegration.

III. Specific provisions of the Convention

A. General principles

94. Article 1, paragraph 1, and article 7 on non-discrimination (6.1) (see paragraphs 15, 35, 36, 43, 45, 48, 49, 52 and 54–93). The 2008 Constitution declares Ecuador to be a land of peace and guarantees people's security. It prohibits, *inter alia*, discrimination on the grounds of migration status³⁶ and the advocacy of hatred³⁷ in a manner that incites discrimination, hostility or violence, and it mainstreams the gender perspective. The State is working to develop the secondary legislation that will support the implementation of the 2008 Constitution.

95. The anti-discrimination and anti-xenophobia programmes implemented by SENAMI as part of its National Human Development Plan for Migrants include an international campaign entitled "Todos Somos Migrantes" (We are all migrants). The aim of this campaign is to: (a) heighten awareness of our human identity, emphasizing the ideals of universal citizenship, solidarity and fraternity and rejecting all forms of discrimination, racism and xenophobia, and; (b) encourage all strategic stakeholders to coordinate their work to protect migrant persons and their families and thus eradicate such problems (see paragraphs 61–67).

96. Six events to raise awareness of the fight against discrimination and xenophobia have been organized to date in 2009. These initiatives have reached a total of 28,000 people, and this number is expected to exceed 40,000 by the end of the year. Forty-one artistic presentations have been organized, with 4,635 people participating in or attending these cultural events, which are designed to strengthen identity. The aim is to run 50 presentations in total. Three virtual networks on migration are now operational, and a further five are due to be created and developed before the end of the year. Ecuador is also working to arrange for the distribution of the film "Prometeo Deportado" (Prometheus deported) to raise awareness among the public at large of the negative impacts of discrimination against migrant persons and their families.

³⁶ 2008 Constitution, article 11, paragraph 2: "All persons are equal and shall have the same rights, responsibilities and opportunities. No person shall be discriminated against on the grounds of ethnicity, place of birth, age, sex, gender identity, cultural identity, marital status, language, religion, ideology, political affiliation, criminal record, socio-economic status, migration status, sexual orientation, state of health, or any other temporary or permanent characteristic which has the effect or result of impairing or nullifying the recognition, enjoyment or exercise of their rights. The law shall punish all forms of discrimination. The State shall adopt affirmative action measures that promote genuine equality in favour of rights holders who are in situations of disadvantage."

³⁷ Law referring to the Code of Criminal Procedure and the Criminal Code (03/09). Article 175.1 establishes a maximum penalty of over five years' imprisonment for "hate crimes, sexual offences and domestic violence, and all other offences that, due to their consequences and circumstances, are a source of great social concern, at the discretion of the judge responsible for procedural safeguards".

97. The challenges that Ecuador faces are complex, since the global tendency is towards far more stringent migration policies incorporating discriminatory, criminalizing, repressive and dissuasive elements that violate the rights of millions of migrant persons throughout the world.

98. As the incidence of xenophobia in the United States has risen, the Ecuadorian Government, through SENAMI, the Ministry of Foreign Affairs and the Office of the Ombudsman, has worked at various levels, and specifically with representatives of the United States Congress, the Department of State and the Department of Homeland Security, to bring attention to its concerns over recent acts of violence motivated by discrimination and xenophobia.

99. The provision of legal assistance to Ecuadorians who fall victim to such acts in foreign countries is one of the Government's key initiatives in this area. SENAMI currently partners with various institutions to offer assistance in the United States, Spain and Italy (see annex 4: Cases of discrimination, xenophobia and racial hatred).

100. At the domestic level, through the Ministry of Justice and Human Rights, the Government is taking preventive action to ensure that migrant workers and members of their families are not subjected to discriminatory attitudes or social stigmatization. To combat discrimination, in 2008 the Ministry organized training for national police officers in human rights and non-discrimination (279 officers), human rights and civil security (course in Esmeraldas, attended by 440 officers), human rights and gender diversity (courses in Quito, Guayaquil, Ambato, Machala, Riobamba and Cuenca, attended by 437 officers), human rights and trafficking in human beings (courses in Orellana, Esmeraldas, Santo Domingo, Guayaquil, Sucumbíos, Manabí and Riobamba, attended by 430 officers), human rights and migration (403 officers), human rights and the movement of persons (courses in Carchi, Orellana, El Oro, Azuay, Cañar, Imbabura, Pichincha and Santo Domingo, attended by 454 police officers and 72 immigration officers), in coordination with SENAMI (see paras. 68–70, 127).

101. To consolidate this training, the handbook on applied human rights for police officers has been redesigned to incorporate a section on human rights and the movement of persons in order to provide national police officers with a conceptual framework for interaction with migrant persons and tools to enhance their knowledge about the issues involved (including films and suggested reading, among other materials). The handbook will be printed up and distributed to all 42,000 officers of the national police force.

102. In conjunction with the Ministry of Defence, the Ministry of the Interior and the Ministry of Foreign Affairs, Trade and Integration, the Ministry of Justice and Human Rights is also developing and implementing a training module on human rights and the movement of persons for all members of the police force (3,000) and the military (6,000) deployed in the northern border region. One of the aims is to work, within the framework of the inter-agency cooperation agreement, to strengthen the Directorate of Human Rights of the Ministry of Defence and to improve the training offered to its staff in this area.

103. The above process will include an initial phase in which 80 police officers and 153 military officers are trained as trainers and a second general phase during which the trainers will pass on their acquired knowledge to police and military officers working in the northern border region of Ecuador. It will also entail the production of written materials to serve as a reference for police and military officers wishing to learn more about the issues covered in the training course.

104. Article 83 on the right to an effective remedy (6.2). The availability of remedies for violations of the rights of individuals is an established principle in cases where the violations occur as a result of acts or omissions or of failures or errors in the performance of the duties of agents and officials of the State or any person acting in exercise of public

authority, in cases of arbitrary detention, judicial error, undue delay or improper administration of justice, or violation of the right to effective judicial protection, or as a result of violations of the principles and rules of due process (2008 Constitution, article 11.9).

105. With regard to the administration of justice, the Ministry of Justice and Human Rights has included a specific procedure for providing comprehensive reparations for any victim of human rights violations in the bill on constitutional oversight. In addition, the State is introducing the concept of comprehensive reparations in its victim and witness protection programme.

106. The Ministry of Justice and Human Rights oversees the enforcement of sentences, precautionary measures, interim measures, amicable settlements, recommendations and resolutions originating from within the Inter-American human rights system and the universal human rights system, as well as compliance with all other obligations arising as a result of human rights undertakings. For this purpose, it must work in coordination with the competent State authority to execute the necessary measures for full compliance with all such obligations.³⁸

107. The Judicial Council has created 36 juvenile courts and 20 labour courts (as of March 2009) to extend the geographic coverage of the administration of justice (see annex 3: Statistics, C4). In 2010 it plans to create a further 205 juvenile courts and 13 labour courts (2010 annual operating plan).

108. With regard to transparency and social oversight, the Office of the Ombudsman,³⁹ created in 1998, is responsible for protecting and safeguarding the rights of the population of Ecuador and the rights of Ecuadorians outside the country (art. 215). It is empowered to enforce constitutional guarantees, to issue immediate enforcement orders for the protection of rights and to submit all cases of non-compliance to the competent authority for judgement and punishment. It is also responsible for ensuring due process.

109. The National Commission for the Protection of Migrants⁴⁰ focuses on ensuring respect for the human rights of emigrants and their families, whether inside or outside the country, immigrants, refugees, internal migrants, internally displaced persons and their families, and victims of human smuggling and trafficking in human beings. The Commission monitors and enforces respect for human rights within the public sector and provides assistance for migrants in conjunction with national and international agencies and organizations⁴¹ in the public and private sectors.

110. Article 84 on the duty to implement the Convention (6.3) (see paragraphs 54–93). Ecuador is implementing strategies designed to ensure compliance with observations Nos. 9 and 17 of the Committee. Through SENAMI, it has published 5,000 copies of the

³⁸ Executive Decree No. 1317 of 9 September 2008. Specific agreement between the Ministry of Justice and Human Rights, the Ministry of the Interior, Police and Worship and the General Police Council (November 2008) concerning the temporary nature of measures to bring about a rapid resolution of the situation, the need to execute measures without violating other rights in the course of their application and to have the least possible impact on the beneficiary, and the active participation of the beneficiary in the implementation of the measure.

³⁹ The Office has 24 provincial commissions and 4 overseas offices.

⁴⁰ The Office of the Ombudsman is being restructured; the Commission will cease to exist, and its functions will be assumed by a team within the new Department of Protection.

⁴¹ Inter-agency cooperation has taken place with the Offices of the Ombudsman of Spain, Colombia, Peru, Venezuela and Bolivia, the Offices of the Civil Ombudsman in the regions of Liguria and Tuscany in Italy, and the Office of the Procurator for the Defence of Human Rights in Nicaragua in order to improve levels of human rights protection and guarantees.

Convention (2008) for distribution nationally and internationally to public officials, organizations, members of civil society and migrants, among others, to help raise awareness of the rights of migrant persons. The text was also an extremely useful reference for the agencies involved in drawing up this report.

111. With support from the International Organization for Migration (IOM), SENAMI is putting together a training kit⁴² on the Convention and how it fits into Ecuador's constitutional framework. The aims of the project are: (a) to train and educate public officials; (b) to ensure that public entities incorporate the obligations assumed under the Convention in their institutional practices and that their planning is linked to the fulfilment of human rights; and (c) to raise awareness among the public in general, and among migrant workers and their families in particular, of the rights to which they are entitled under the Convention.

112. In the course of 2009, four regional meetings on the human rights of migrant workers and their families were organized in Quito, Loja, Puyo and Manta, with inter-agency support from the Office of the Ombudsman, the Ministry of Foreign Affairs, Trade and Integration, the Ministry of Justice and Human Rights, and SENAMI.

113. There are plans to establish an inter-agency governmental committee to monitor progress in the application of the Convention on an annual basis. The Ministry of Justice and Human Rights will be organizing workshops and round tables throughout the country for this purpose.

B. Part III of the Convention

114. Article 8 on the right to leave any country, including one's own, and to return (7.1) (see paragraphs 37, 40, 48, 61–67 and 90). The "Bienvenid@s a Casa" Plan which is promoted by SENAMI through the National Human Development Plan for Migrants, is based on the idea of advocating emigrants' return in the broadest sense of the word, which does not necessarily imply a person's physical return but, more generally, the return or recovery of skills. The aim is to encourage Ecuadorians to stay in their country and to create the conditions necessary for a voluntary, sustainable return with dignity. The Plan covers three programmes⁴³ that support and assist Ecuadorians abroad and their families in Ecuador.

115. *The "Vínculos" (Links) Programme (1)*. The aim of this programme is to consolidate and improve forums and mechanisms for participation and communication between emigrants and their family, community, organizations and country. It provides for the placement of representatives abroad in the "Casas Ecuatorianas" (Ecuadorian homes) outreach facilities. It also conducts "cultural caravans" to raise awareness about migration and to work for the advancement of migrants. In order to promote the return or recovery of skills, the programme fosters the exchange and transfer of knowledge and best practices, the creation of exchange networks and the development of human talents. There are four main lines of action: recognition of degrees,⁴⁴ creation of databases for professionals and

⁴² The kit consists of a manual for facilitators, a workbook and handbooks on human rights and enforcement mechanisms.

⁴³ These programmes are growing steadily and work in conjunction with all the Ministries and State agencies.

⁴⁴ Regional or bilateral agreements for the direct recognition of degrees and professional qualifications have been the main legal mechanism for facilitating mobility for foreign professionals in Ecuador and for Ecuadorian professionals returning to Ecuador.

students abroad (Spain, Italy, Argentina and Chile), setting up networks and knowledge transfer.

116. *Virtual platform.*⁴⁵ Virtual social networking tools and services are provided, as well as information on SENAMI, its programmes and migration. Its results for 2008–2009 include: 6,847 members of the social network; 2,216 communicate regularly with people in Ecuador; 3,837 use the Platform’s services frequently; 4 audiovisual productions broadcast via *migranteecuadoriano*tv, 12 live broadcasts of major events, 50 virtual conferences, 3 virtual education courses and the establishment of 5 telecentres. The Platform also provides support for elections and assisted in drafting the Citizens’ Participation Council Act.

117. *FORES.* This program works to promote the right to participation at the national and international levels by strengthening partnerships, training leaders and creating migration stakeholder networks by supporting civic participation and raising social awareness, strengthening organizations, and creating civil society and institutional networks. It works with Colombian and Peruvian immigrant organizations and is supporting the preparation of the code or law on the movement of persons. In 2009, it held the first State-sponsored meeting of Ecuadorian organizations in Spain using the slogan “Migrar nos ha unido” (Migration has united us), which was attended by more than 200 persons and over 70 Ecuadorian organizations in Spain. In its first six months of operation in 2008, it reached 385,030 individuals directly and 371,637 indirectly. The institutional network for the southern region comprises 18 agencies and, in order to implement Ministerial Decision No. 337, it is setting up a network of 8 different institutions. It has also provided support to reinforce 9 organizations, and work is under way with approximately 14 more.

118. *Production incentives programme (2).* This programme seeks to encourage and advise individual migrants or groups of migrants wishing to make social and productive investments in Ecuador. It includes the Cucayo Fund, which provides incentives for production projects through advice, training and access to credit and seed capital for business start-ups. This is a competitive fund offering up to US\$ 15,000 for individual and/or family projects and up to US\$ 50,000 for joint projects (25 per cent from SENAMI and 75 per cent from the migrant entrepreneur). Agreements have been reached with CFN, the public-sector finance corporation, and with BNF, the national development bank, to provide lines of credit and access to credit facilities for migrants wishing to undertake production projects. Under a programme entitled “Tourism Ambassadors of Ecuador”, training and credit for tourism projects on the coast are being provided. The Youth, Employment and Migration Project is designed to safeguard the rights of young people and has set up a network of offices to assist them with business ventures by forming strategic alliances with local initiatives. The Cañar-Murcia project is also under way.

119. *The Migrants Bank.* The creation of this bank requires the assistance of a financial institution to promote migration policies relating to finance and investment by offering remittance transfer services from abroad and within Ecuador at non-speculative prices which reflect the actual cost of the transaction. To this end, agreements have been signed with strategic partners, such as the Cooperative Transaction Network, to set up an alternative channel for remittances from the United States of America to Ecuador. The Central Bank of Ecuador and the Migrants Bank are participating in this initiative.

120. *Assistance programme for physical return migration (3).* The “Volver a Casa” (Going home) project facilitates the exercise of the right to a return with dignity by helping to reduce the economic and legal obstacles to return migration and promoting returning

⁴⁵ The website www.migranteecuadoriano.gov.ec won the award for the best website in Ecuador in the e-inclusion and participation category.

migrants' social and labour reintegration. As part of the agreement between the Ecuadorian Customs Corporation and SENAMI, no tax is levied on household goods, motor vehicles or work equipment brought into the country by returning migrants. Housing allowances,⁴⁶ and advisory services are provided by the Ministry of Urban Development and Housing and private building companies for the construction of houses for returning emigrants or their families. This means-tested allowance of up to US\$ 7,000 per family is granted for housing that does not exceed US\$ 35,000 in value. Measures are also in place to make it easier for professionals abroad to participate in merit-based selection processes and competitive examinations for teaching positions or employment in the public health-care system. For information on an additional assistance programme, see paragraphs 145–148.

121. The current global financial crisis must be taken into account. It is difficult to estimate Ecuadorian emigrants' inclination to return, but the possibility of returning should not be considered as a social burden on the State. On the contrary, return migration should be seen as a way of recovering skills. Information will be gathered to determine what trends exist with regard to return migration or stays in the country.⁴⁷

122. With regard to paragraph 21 of the Committee's concluding observations concerning Ecuador's initial report, the former Constitutional Court ruled that an exit permit was no longer necessary to leave the country as of 29 December 2007. Ecuadorian nationals and foreigners may therefore freely exercise the right to leave the country. This right has been reinforced by the decision of Congress to repeal the requirement that Ecuadorians present proof that they have completed their military service in order to leave the country (article 99, paragraph (e), of the National Defence Act).

123. Certain legal restrictions remain in place for minors leaving the country in order to protect the best interests of the child.⁴⁸

124. Article 30 of Decree No. 3310 requires that refugees notify the authorities when they leave the country as a precautionary measure.

125. Colombian citizens are required, under Decree No. 1471 of 17 December 2008, to present a legally certified document from the competent Colombian authority which confirms that they do not have a criminal record. This provision does not apply to refugees or asylum-seekers. However, the Office of the Ombudsman has informed the Government that, in its view, the entry into force of Executive Decree No. 1471, signed on 3 December 2008, which reintroduces the requirement of an attestation showing that Colombian citizens do not have a criminal record, is not in accordance with the recommendation made by the Committee in paragraph 20 of its concluding observations. The Office of the Ombudsman has therefore called for the review of this legislation and for inter-agency initiatives that are adequate, reasonable and respectful of human rights.⁴⁹

126. In Decision No. 38 of 25 October 2009, the Office of the Procurator-General clarified that injunctions issued by juvenile courts to block departures from the country are not subject to article 18 of the regulations issued under the Migration Act, which state that

⁴⁶ The municipalities are also adopting measures to reduce property taxes for a fixed period of time on residences built by Ecuadorian emigrants. This has been done, for example, by the Municipality of Quito.

⁴⁷ Susana López Olivares, "Análisis de Coyuntura: Estimación de la proclividad al retorno de ecuatorianos/as emigrantes", SENAMI-IOM, p. 3.

⁴⁸ Children's and Adolescents' Code, art. 11, on the best interests of the child; arts. 109 and 110, on authorization to leave the country for Ecuadorian or foreign children and adolescents resident in Ecuador.

⁴⁹ Ecuadorian Office of the Ombudsman (2009), Official Communication No. D-DP-AS-2009, section 9, subsection 2.

the court must renew the injunction every six months; consequently, the migration authorities must implement this precautionary measure. In this case, the best interests of the child or adolescent prevail over the right of freedom of movement and the parents' right to leave the country in order to protect the rights of children and adolescents and to establish parental responsibility.

127. Articles 9 and 10 on the right to life, the prohibition of torture and the prohibition of cruel, inhuman or degrading treatment or punishment (7.2) (see paragraphs 35, 40 and 94–103). National legislation prohibits cruel, inhuman or degrading punishment, although such punishments have not yet been criminalized in the Criminal Code. The Constitution of 2008 recognizes the principle whereby international human rights instruments have the same status as constitutional provisions, and it is therefore imperative to include such offences in the country's body of law. The corresponding provisions will be incorporated into the new Criminal Code of Guarantees.

128. Article 11 on the prohibition of slavery and forced labour (7.3) (see paragraphs 40, 73, 74, 82 and 83). The revised Criminal Code of 2005 criminalized the following offences for the first time: the offence of trafficking in human beings, offences relating to the unlawful extraction and trafficking of organs, and sexual exploitation offences. Article 138.3 of the Labour Code, revised in 2006, prohibits using, recruiting or providing children for prostitution, production of pornography or pornographic activities, and human trafficking. Article 32 of the Sentences and Social Rehabilitation Code, revised in 2008, provides that reduced sentences are not allowed in the case of trafficking offences. In March 2009, article 528 of the Criminal Code was amended to penalize the exploitation of the prostitution of others (procuring), and a chapter on the offence of child pornography was included. Article 70 of the Children's and Adolescents' Code defines the offence of child trafficking.

129. Under the National Plan to Combat Human Trafficking and the Smuggling of Migrants, participating agencies have adopted measures at various levels: (1) training for the national police force in human rights and combating human trafficking has been provided by the Ministry of Justice and Human Rights, the Ministry of the Interior, Police and Worship, and the national police force (see paragraph 100); training for labour inspectors in detecting cases of trafficking and bringing them to the attention of the judicial authorities was furnished by the Ministry of Labour Relations in 2009; training for consular staff in protocol has been conducted (see item 3); and training for civil servants with regard to child and adolescent victims of trafficking was provided in 2008 by the National Council for Children and Adolescents (CNNA); (2) activities in the area of information gathering include the design, validation and development of a system for recording information about human trafficking and sexual exploitation⁵⁰ by the Ministry of Justice and Human Rights, the Ministry of the Interior, Police and Worship and IOM in 2008–2009; (3) institutional actions have included revision of the Plan by the Ministry of Justice and Human Rights in 2010; the creation of a website for the Plan⁵¹ by the Ministry of Justice and Human Rights, the Ministry of the Interior and IOM; development of a consular protocol for assisting victims of trafficking⁵² by the Ministry of Foreign Affairs, Trade and Integration and IOM; preparation of a baseline analysis and an evaluation of institutional requirements in 2008;

⁵⁰ An early warning support mechanism for the institutions implementing the Plan; receiving, processing, systematizing and evaluating information coming from different institutions; and indicators of institutions, sources, victims, families, cases and persons involved.

⁵¹ An information, coordination and monitoring mechanism for institutional activities and responsibilities (www.plantrata.gov.ec).

⁵² Support mechanism for consular staff for use in the provision of comprehensive care for victims of trafficking.

development of a protocol for the comprehensive care of child or adolescent victims of trafficking, training modules for facilitators, a compendium of legislation and policies, and a methodology for specialized victim-support services by CNNA and the Inter-American Development Bank in 2007–2009; development of an action strategy for preventing and eradicating the commercial sexual exploitation of children and adolescents in the tourism industry in Ecuador⁵³ by the Ministry of Labour Relations and ILO in 2005; and the establishment of a specialized police team to deal with investigations, to rescue victims and to identify networks and offenders by the Special Police Department for Children and Young Persons (DINAPEN).⁵⁴

130. Between 2006 and May 2009, DINAPEN registered the following incidents of trafficking in children and adolescents: begging (85.83 per cent), labour exploitation/slavery (6.91 per cent), sexual exploitation (3.46 per cent), servitude (2.53 per cent), recruitment for criminal purposes (0.69 per cent) and armed conflicts (0.58 per cent). As a result of its nationwide measures between 2004 and 2009, it reports that 237 children and adolescents and 45 women victims of human trafficking were rescued and that 83 individuals were arrested for this crime. At the international level, 27 victims of labour exploitation from various Latin American countries have been rescued. In Pichincha, 18 final judgements have been handed down for the crime of human trafficking: 13 for sexual exploitation, 2 for child pornography, 2 for coercing children into begging and 1 for recruitment for criminal purposes. In 2008, the Prosecutor's Office reported 99 cases of trafficking, 92 inquiries in progress, 5 dismissals, 25 initiating orders, decisions to drop charges in 5 cases, the filing of charges in 14 cases, 6 committal orders, 5 decisions to stay proceedings, 3 guilty verdicts and 2 acquittals (see appendix 3: Statistics, C5 and C6).

131. The 2008 Constitution (art. 198) established a national system for the protection and assistance of victims,⁵⁵ witnesses and other participants in criminal proceedings. In accordance with the new Judicial Code (art. 295), it is the responsibility of the Attorney-General's Office to organize, direct and implement the system. The Code of Criminal Procedure establishes the right of witnesses, injured parties and the accused to protection in order to ensure their personal safety and privacy, their appearance in court and the accuracy of their testimony (arts. 69 and 118).⁵⁶

132. This system entails a set of inter-institutional measures for the assistance and comprehensive protection of victims, witnesses and other participants in criminal proceedings. Its aim is to protect such persons' physical, psychological and social well-being, facilitate their participation in criminal proceedings and ensure that crimes do not go unpunished. Currently there are 23 national coordinators. Between the time when the programme was set up in 2001 and May 2009, a total of 1,985 individuals were given

⁵³ Mechanism for the prevention and eradication of the commercial sexual exploitation of children and adolescents in the tourism industry. This mechanism is to be put into use in Quito, Guayaquil, the Santa Elena peninsula, Manta, Atacames, Cuenca and Coca.

⁵⁴ This team works in the fields of prevention, training and investigation. It focuses on crimes committed by adults against children and adolescents.

⁵⁵ Victim: any person who has suffered impairment of his or her rights as the result of a crime. Under the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 1985, it is not necessary for the perpetrator to be convicted for a person to be considered a victim.

⁵⁶ See the Programme for the Protection and Assistance of Victims, Witnesses and Other Participants in Criminal Proceedings, set up in 2001 by Ministerial Decision No. 001-A-2001-MFG (Office of the Attorney-General) and provided for in the Attorney-General's organizational operating regulations, the regulations of the programme (*Registro Oficial* No. 671, 26 September 2002) and the revised regulations (*Registro Oficial* No. 150, 17 August 2007).

protection. The new system has only minimal financial and logistical resources; a new budgetary item is needed to consolidate its resource base.

133. Steps taken to eliminate child labour include the following: (1) measures targeting rubbish dumps in 2002–2008 in 23 cantons of more than 20,000 inhabitants resulted in the elimination of approximately 1,500 cases of children and adolescent labour, while projections for 2009 covering 37 cantons with fewer than 10,000 inhabitants point to the elimination of child and adolescent labour in approximately 500 cases (it is expected that in 2010 Ecuador will be the first country in the world to have managed to eliminate child labour in rubbish dumps);⁵⁷ (2) measures targeting mines in 2002–2004 in Ponce Enríquez Canton, Azuay province and the Bella Rica mine resulted in the elimination of 500 instances of child and adolescent labour, while projections for 2009–2010 indicate that approximately 1,000 cases of child and adolescent labour will be eliminated in that period; (3) measures targeting banana plantations in 2007–2009 succeeded in eliminating approximately 500 cases of child and adolescent labour, while the projections for 2010 point to the duplication of those results; (4) measures adopted in 2009 to do away with domestic service — which, in all its guises (i.e., both live-in and live-out service), is a modern form of slavery that has been banned in Ecuador for persons aged under 18 years — were to focus on geographical areas that are considered to be exporters of child labourers; (5) in the large-scale farming, brickworks, quarries and construction sectors, there are projections for 2010.

134. In 2008, a total of 2,224 children and adolescents were removed from child labour following 3,089 full labour inspections carried out nationally as part of the Child Labour Inspection System. There is still much to be done, however, as a total of 662,665 children and adolescents are working in Ecuador.⁵⁸

135. Articles 12, 13 and 26 on freedom of opinion and expression; freedom of thought, conscience and religion; and the right to join a trade union (7.4) (see paragraphs 116–118). The universal rights and freedoms recognized and guaranteed by the 2008 Constitution include the right to personal development; the right to hold an opinion and to express one's thoughts freely in all forms and manifestations; the right to practise, maintain, change and profess one's religion or beliefs in public or private, and to disseminate them individually or collectively, in accordance with the restrictions that result from respecting the rights of others. The State will protect voluntary religious practice, as well as the freedom of expression of those who have no religion, and will promote an environment of diversity and tolerance. It also guarantees the right to remain silent about one's convictions. No one may be forced to divulge their beliefs. Under no circumstances may personal information or information from third parties on religious beliefs, political affiliation or opinion, health and sexual activities (except for medical reasons) be demanded or used, without the approval of the person concerned or their legal representative. The State also guarantees the right of association, freedom of assembly and the right to demonstrate freely and voluntarily (art. 66, paras. 5, 6, 8, 11 and 13).

136. The Labour Code provides for the creation of trade unions and professional associations (arts. 443 and 444) and for the exercise of this right in accordance with the Constitution and national legislation.⁵⁹

137. The trade union movement in Ecuador is only peripherally involved in migration-related issues, and foreign workers have not been highly active in this movement. Some

⁵⁷ In order to support these achievements, projects to improve solid waste collection are being developed in the areas concerned.

⁵⁸ INEC, 2006, latest survey.

⁵⁹ ILO Convention No. 87, art. 8.1.

steps are being taken on a national level and in the Andean region. ILO has been devoting considerable attention to this topic. There is a need for the unionization and political participation of migrants within the trade union framework.

138. Articles 14 and 15 on the prohibition of arbitrary or unlawful interference with privacy, the family, the home, correspondence or other communications; unlawful attacks on a person's honour and reputation; and prohibition of arbitrary deprivation of property (7.5) (see paragraph 37). Along with other rights and freedoms, the 2008 Constitution guarantees the rights to honour; to reputation; to protection of one's image and voice; to protection of personal information; to personal privacy and the privacy of one's family; and to the inviolability of one's home and the confidentiality of one's physical or virtual correspondence (art. 66, paras. 18–22). The Criminal Code criminalizes slander (art. 489). The national postal service upholds the confidentiality and inviolability of correspondence.⁶⁰ The Constitution of 2008 also guarantees the right to protection against the arbitrary deprivation of goods and property (art. 6.2). Ecuador cannot sign any bilateral or multilateral agreement that infringes these rights.

139. Article 16 (paras. 1–4), 17 and 24 on the right to liberty and security of person, safeguards against arbitrary arrest and detention and recognition as a person before the law (7.6) (see paragraphs 101–103 and 142–144). The Criminal Justice System Commission was set up in 2009.⁶¹ Its objectives are to: (a) disseminate information about the activities of justice officials, their roles and the structure of the justice system, thereby contributing to the general public's perception of the organization, service and accessibility of the agencies concerned; (b) inform the general public about the procedures to follow in order to gain access to justice and the mechanisms used to make its administration more efficient, in particular with regard to court hearings for those caught in flagrante delicto, ways to gain access to justice expeditiously and efficiently, the duties performed by each justice official, and the right to defence, including access to public defenders in cases where the accused does not have sufficient means to pay for a lawyer. The Ministry of Justice and Human Rights is developing strategies to improve the conditions for detained persons.

140. State institutions are working together to restore the right to freedom from arbitrary detention.

141. Article 16 (paras. 5–9), 18 and 19 on the right to procedural guarantees (7.7) (see paragraphs 37, 42, 52, 68, 69, 104–109 and 151). The Constitution and the Code of Criminal Procedure set out procedural guarantees, the rights of persons deprived of their liberty and the obligation of the authorities to provide information on individuals' rights.⁶²

142. Ecuador has signed: (a) The Council of Europe Convention on the Transfer of Sentenced Persons, in 2005; (b) a convention on the transfer of convicted persons between

⁶⁰ Service regulations of the national postal service, arts. 10 and 11.

⁶¹ Executive Decree No. 1179 of 30 June 2009. The system is coordinated by the Ministry of Justice and Human Rights, the Office of the Attorney-General, the national police force, the judiciary, the Office of the Ombudsman and the Ministry of the Interior, Police and Worship. The media also help to implement the relevant measures.

⁶² Art. 116: "Anyone who is arrested has the right to be fully informed of the reasons for the arrest, the identity of the authority ordering the arrest, the identities of the officers making the arrest and the identities of those conducting questioning. The person arrested shall also be informed of his or her right to remain silent, to request the presence of counsel and to communicate with a family member or any other person of his or her choice. Anyone who arrests a person, with or without a written court order, and who fails to provide confirmation that the detainee has been handed over immediately to the competent authority shall be penalized. A person of trust chosen by the accused and his or her counsel must also be informed."

the Republic of Ecuador and the Republic of Peru, in 2000; (c) a convention on the transfer of convicted persons between the Republic of Ecuador and the Republic of Paraguay. The Ministry of Justice and Human Rights is responsible for carrying out the repatriation of Ecuadorians or aliens. To date, 32 repatriations have taken place in Africa and the Middle East and 37 in Asia (see appendix 3: Statistics, C7).

143. The Protocol for the Protection of Ecuadorians Deprived of Liberty when Abroad⁶³ is designed to improve the protection of nationals abroad through the use of inter-institutional mechanisms by the Ministry of Foreign Affairs, Trade and Integration, the Ministry of Justice and Human Rights, SENAMI and the Office of the Ombudsman.⁶⁴

144. Article 20 on the prohibition of imprisonment, deprivation of authorization of residence or work permit and expulsion merely on the ground of failure to fulfil a contractual obligation (7.8) (see paragraph 40). The 2008 Constitution prohibits the imposition of prison sentences on the grounds that a debt is owed (art. 66, para. 29 (c)). National legislation does not provide for the withdrawal of residency permits or deportation for failing to fulfil a contractual obligation.

145. Articles 21, 22 and 23 on protection from confiscation or destruction of identity and other documents, protection against collective expulsion and the right to recourse to consular or diplomatic protection (7.9) (see paragraphs 37, 40, 61–67 and 142–144). The Ministry of Foreign Affairs, Trade and Integration, through the Office of the Under-Secretary for Consular Services and Diplomatic and Consular Missions, is developing a consular policy and is updating and upgrading its services on an ongoing basis. New permanent or temporary consulates have been opened in response to increased demand from citizens living abroad in Italy, Spain (Malaga, Alicante and Palma de Mallorca in 2008) and the United States of America. The Virtual Consulate⁶⁵ was set up to provide information, improve access to consular services and provide on-the-spot responses to

⁶³ Based on the broad definition used by the Inter-American Commission on Human Rights during its 131st regular session in March 2008: “Any form of detention, imprisonment, institutionalization, or custody of a person in a public or private institution, which that person is not permitted to leave at will, by order of or under de facto control of a judicial, administrative or any other authority, for reasons of humanitarian assistance, treatment, guardianship, protection, or because of crimes or legal offences. This category of persons includes not only those deprived of their liberty because of crimes or infringements or non-compliance with the law, whether they are accused or convicted, but also those persons who are under the custody and supervision of certain institutions, such as: psychiatric hospitals and other establishments for persons with physical, mental or sensory disabilities; institutions for children and the elderly; centres for migrants, refugees, asylum- or refugee-status-seekers, Stateless and undocumented persons; and any other similar institution the purpose of which is to deprive persons of their liberty.”

⁶⁴ For example, in one case, an Ecuadorian woman sentenced to imprisonment abroad requested help from the Government of Ecuador. She was pregnant at the time that she was imprisoned. Under the laws in force, when the child turned 3 years old, he would have to be removed from the prison where the mother was being held and placed with relatives or, if no family members live in the country of detention, in a shelter or in a social services institution. At this point the Ministry of Foreign Affairs, Trade and Integration, the Ministry of Justice and Human Rights and SENAMI set this institutional network into motion. The Ministry of Foreign Affairs, Trade and Integration, through the country’s diplomatic mission, made all the necessary arrangements with the local judicial authorities, and the Ministry of Justice and Human Rights, as the central authority, requested this Ecuadorian citizen’s repatriation. SENAMI assisted the mother and child by paying all costs associated with the civil liability lawsuit to the local authorities and returning the child to Ecuador before he reached the age limit.

⁶⁵ Website: www.consuladovirtual.gov.ec.

queries. A training programme for consular officials has been implemented and procedures are being optimized.

146. Consular services complement and are coordinated with the assistance programme for migrants and their families being conducted as part of the National Human Development Plan for Migrants implemented by SENAMI (see paragraphs 61–67 and 115–122). Assistance is provided through the Casas Ecuatorianas facilities that have been set up in the countries where the largest numbers of Ecuadorians are located (the United States of America, Spain, Italy and Venezuela) and, within Ecuador, through assistance centres in Quito, Guayaquil, Cuenca, Loja, Riobamba, Manta, Ibarra, Cañar, Paute, Macas, all of which are areas with high migration rates. Information on plans, programmes, services, advisory assistance and follow-up are also available via the Roving Virtual Platform, which is brought to towns with large Ecuadorian populations, along with the mobile assistance projects run by SENAMI. Consideration is being given to the possibility of opening Casas Ecuatorianas in London, Belgium and Barcelona.

147. The “Crece en Familia” (“Growing up with your family”) project provides psychological and educational support. The Programme to Assist Persons in Situations of Vulnerability⁶⁶ deals with cases of forced return, such as deportations and expulsions, through reception centres in the cities of Guayaquil and Quito that provide immediate, primary psychological help, a toiletry kit, food, communication services, accommodation and transport within the country. There is also a programme to help with the repatriation of the bodies of Ecuadorians who die abroad.⁶⁷

148. As of March 2009, the following results had been achieved:

(a) Return migration with direct support from SENAMI: 5,694 migrants and their families returned to Ecuador, of which 3,381 returned due to force majeure and were taken in by SENAMI (those in vulnerable situations, deportees and those who returned under the aegis of IOM and SENAMI); 1,320 returning families were able to bring their household goods along with them; the bodies or mortal remains of 59 persons were repatriated;⁶⁸ 775 families received assistance from the Cucayo Fund (78 businesses have been set up);⁶⁹ 49 families are applying for assistance from the Fund; 50 families have received microcredits for tourism projects (SENAMI-BNF); 60 families with tourism businesses (pre-feasibility);

(b) Return migration (in process or completed) with indirect support: of the 16,085 migrants and their families in this category who are returning or have returned to Ecuador, 11,870 have received advisory assistance and 4,215 registered with the Plan (up to February 2009). Around 33,000 persons have participated in virtual events in Ecuador and

⁶⁶ See the rules of procedure of the SENAMI committee responsible for emergency cases and assistance for Ecuadorian migrants in vulnerable situations. Resolution No. SENAMI-0097-08 of 27 November 2008.

⁶⁷ Executive Decree No. 1253/2009 authorizes SENAMI to repatriate the bodies of Ecuadorians who die abroad. Executive Decree No. 1418/2008 broadened the scope of this authorization to cover mortal remains (after cremation). Eligibility for the programme is determined on the basis of a socio-economic evaluation of the family of the deceased. Financial support will depend on the level of vulnerability of the deceased’s relatives. Even if the body’s repatriation is not subsidized, logistical support is provided by the corresponding diplomatic mission abroad and at the airport in Ecuador.

⁶⁸ For complete, up-to-date data on the repatriation of bodies and mortal remains, see paragraph 150.

⁶⁹ The Cucayo project has invested over US\$ 1 million in providing specialized technical advisory services and seed capital for 78 business projects being undertaken by Ecuadorian migrants who are in the process of returning to Ecuador. In 2009, another 300 family businesses and partnerships will receive financial support and more than 1,000 will be provided with advisory services.

other countries (as of December 2008). The Virtual Platform has a daily average of 3,000 hits from 74 countries worldwide.

149. From August to December 2008, 34 repatriations of bodies and mortal remains were carried out and advisory services were provided in 35 cases. The majority of the repatriations were undertaken from Spain (55.28 per cent), followed by the United States of America (29.41 per cent) and Italy (5.88 per cent). As of mid-October 2009, 106 repatriations had been carried out; much the same trend as in 2008 was seen with regard to the countries of origin (see annex 3: Repatriation of bodies, C8).

150. For information on the assistance provided in the case of deportations, see paragraph 142. The findings of the return migration project being implemented by IOM indicate that 186 Ecuadorians were deported or expelled in 2007. In 2008, 1,663 Ecuadorians were deported or expelled, and thus far in 2009, 616. The data compiled by the National Migration Directorate (DNM) and the Ministry of the Interior, Police and Worship show that in 2008, 3,069 Ecuadorians were deported, with 1,558 more as of June 2009, the majority of them from the United States of America (60 per cent) (see annex 3: Statistics, C9).

151. DNM and the Ministry of the Interior also report that, in 2008, 1,507 aliens were deported from Ecuador. As of July 2009, another 671 aliens had been deported. The Ministry is developing a legal instrument to ensure due process for deportees (see annex 3: Statistics, C10).

152. Articles 25, 27 and 28 on the principle of equality of treatment in respect of remuneration and other conditions of work and terms of employment, social security and the right to receive urgent medical care (7.10) (see paragraphs 34–36 and 54). Under article 9 of the Constitution, all the rights set forth in the Labour Code pertain to foreign nationals. Specifically, they are entitled to equal treatment with regard to overtime, hours of work, obligatory rest time, social security, remuneration, termination of employment, and other conditions of employment. Labour inspectors and other authorities are responsible for ensuring respect for all workers' rights.

153. Article 560 of the Labour Code requires that all aliens who wish to enter the country to undertake employment must first obtain a certificate from the Ministry of Labour Relations in order to apply for or renew a visa or to change their visa to one which allows them to work. They have 30 days in which to do so (see article 57 of the regulations applicable to the Aliens Act). The Department of Employment of the Ministry of Labour Relations for the highlands and the Amazonian region reported that, in 2007, 795 work permits were awarded: 515 to men, 206 to women and 74 group permits. In 2008, 632 were granted: 434 to men, 133 to women and 65 to groups (see annex 3: Statistics, C11).

154. From 2007 to June 2009, the Immigration Directorate of the Ministry of the Interior granted the following immigrant (i.e., permanent residency) visas: 463 9-IV visas for general agents, people with employment contracts and representatives of religious orders and 324 9-V visas for professionals, out of a total of 7,426 visas in all categories. The General Directorate for Migration Affairs of the Ministry of Foreign Affairs, Trade and Integration granted 1,488 non-immigrant 12-VI (temporary work) visas in 2008 and another 565 as of April 2009. In both 2008 and 2009, technical cooperation visas made up the largest category, followed by work visas (see annex 3: Statistics, C13 and C14).

155. Ecuador has signed social security agreements with Spain (1960, being updated at the time of writing), Chile (in 2009), Mexico, Uruguay, the Netherlands and Venezuela (in process). Ecuador has ratified the Ibero-American Social Security Convention, which extends social benefits conferred by each member State to immigrant workers from other member States within its borders. An implementing agreement is needed for its entry into force, and the conclusion of such an agreement is foreseen for the end of 2009. Although

the Convention has not yet come into force, the Ecuadorian Social Security Institute currently covers more than 97 per cent of all resident foreign workers in Ecuador. In 2009, an inter-institutional agreement was signed by the Ministry of Foreign Affairs, Trade and Integration, SENAMI and the Ecuadorian Social Security Institute. This agreement allows Ecuadorians abroad to register with the social security system on a voluntary basis and is now being implemented.

156. Article 42, paragraph 31, of the Labour Code provides that employers must register workers with the Ecuadorian Social Security Institute on their first day of work, in accordance with the provisions of articles 73 and 148 of the Social Security Act.

157. The national health policy guarantees universal access to health services for the entire population, including migrants and their families, on an equitable basis according to each person's health-care needs. It is obligatory for all health establishments, whether public or private, to provide assistance to all Ecuadorian or foreign patients, regardless of the person's ability to pay or their migratory status.

158. Health care is free, although this policy is being implemented on a step-by-step basis, as all of the budgetary allocations are not yet available. Under the amended Free Maternity Care Act, women of any nationality who are in Ecuador have access to all public health services. Along the Colombian-Ecuadorian border, health-care efforts are focused on displaced persons, who have free access to such services.

159. The Ministry of Public Health has set up the Office of the Under-Secretary for the Extension of Social Protection to Health Care to provide, through international agreements, patients with access to highly complex medical procedures in specialized centres abroad; subsidies of up to US\$ 80,000 are available, depending on the cases concerned. A malaria control programme is being implemented in Ecuador's border areas.

160. With regard to refugees, asylum-seekers and persons in need of international protection, refugees may be self-employed or may work for others once they have obtained an employment permit.⁷⁰ In 2007, the Ministry of Labour Relations issued 138 provisional 90-day permits to refugees and, in 2008, 205 were issued (see annex 3: Statistics, C12). They have the same social security rights. Asylum-seekers are not entitled to work; however, an amendment to Executive Decree No. 3301/1992 is under consideration. Nevertheless, they do have access to health care (Executive Decree No. 118/2004).

161. In 2007, the United Nations High Commissioner for Refugees (UNHCR) carried out a survey that highlighted the fact that gaining access to employment was very difficult for this population, in particular for Colombian nationals. According to the survey, 46.6 per cent of the women and 76 per cent of the men in this group work, the majority in the informal sector.⁷¹ The opinion of the survey respondents was that they did not receive the same remuneration or social benefits. In all, 70 per cent of this population group has access to health services. Along the northern border, 30 per cent of households stated that health

⁷⁰ Executive Decree No. 3301 of 1992, art. 23, provides that presentation of the identification document granted by the Ministry of Foreign Affairs to a refugee will be regarded as a sufficient basis for the Ministry of Labour Relations to issue an employment permit. Ministerial Decision No. 452 of 2006 provides for the introduction of employment cards for aliens who reside in Ecuador and have refugee status. These cards are issued free of charge.

⁷¹ The United Nations High Commissioner for Refugees, "La población colombiana en necesidad de protección internacional residente en el Ecuador", 2007 survey, national report, UNHCR, pp. 10 and 46.

services did not exist. Access to free maternity services is limited, mainly due to the fact that potential beneficiaries are not aware that such services are available.⁷²

162. Articles 29, 30 and 31 on the right of each child of a migrant worker to a name, to registration of birth and to a nationality; access to education on the basis of equality of treatment; and respect for the cultural identity of migrant workers and members of their families (7.11) (see paragraphs 33, 35 and 39). Children born in Ecuador, regardless of their parents' migration status, are Ecuadorians. The parents of Ecuadorian children may obtain an indefinite 9-VI visa for family reunification purposes. There is, nonetheless, a large number of unregistered children, as many people are unaware of this right.

163. The following developments have taken place in the field of education: Ministerial Decision No. 455/2006, which entitles child and adolescent refugees or asylum-seekers to attend basic and secondary education schools and relaxes the entry requirements. Ministerial Decision No. 337/2008 guarantees access to preschool, primary and secondary education for foreign children and adolescents, independent of their migratory status. It also relaxes the entry requirements, establishes that enrolment is free of charge and prohibits schools from refusing indigenous children and adolescents access to education in border areas. The Ministry of Education is developing a plan to publicize this decision and to provide training and follow-up. To this end, seven workshops were held in 2008 and 2009. Information will be gathered for evaluation purposes.

164. According to the 2007 UNHCR survey, 63 per cent of child and adolescent refugees, asylum-seekers and persons in need of international protection are attending school. The survey results indicate that there is an elementary and secondary school in 73 per cent of the communities.⁷³

165. Articles 32 and 33 on the right to transfer earnings, savings and personal belongings to the State of origin; the right to be informed about the rights arising from the Convention and to the dissemination of information; and the right of migrant workers and members of their families to be informed by the State of origin, the State of employment or the State of transit, as appropriate (7.12) (see paragraphs 110–113, 117, 118, 120 and 146).

C. Part IV of the Convention

166. **Article 37 on the right to be informed before departure of the conditions of admission to the State of employment and of remunerated activities (8.1)** (see paragraphs 189 and 198). In 2001, Ecuador signed an agreement with Spain on the regulation and organization of migration flows. The objective of this agreement, which is still in force, is to provide migrant Ecuadorian workers with sufficient guarantees. A procedure involving the participation of the employer or his or her representative has been established under which workers are selected on the basis of existing offers of employment. A joint Spanish/Ecuadorian committee analyses the application of these procedures. The agreement is implemented by the Office for the Recruitment of Migrant Workers of the Ministry of Foreign Affairs, Trade and Integration. The Trade Union Institute for Development Cooperation informs the recruits of their labour rights during each selection procedure.

⁷² According to the 2007 survey entitled "La población colombiana en necesidad de protección internacional residente en el Ecuador" of UNHCR, 50 per cent of respondents were unaware of their right to free access to maternity services, 16 per cent did not think they were entitled and only 34 per cent were aware of this right (p. 53).

⁷³ *Ibid.*, p. 50.

167. From January 2007 to April 2009, there were 61 notices offering 2,486 employment opportunities for shop assistants, waitresses, cleaners, nurses, agricultural workers and others. For those jobs, a total of 8,343 persons were interviewed, and 2,443 persons were hired, leaving 43 jobs vacant because the profiles of the applicants did not match the profiles indicated by the contractors. During the selection procedures that took place between 2008 and April 2009, the destination cities with the greatest number of persons hired were: Zaragoza, with a total of 192, Almería, 150 and Barcelona, 95. Of the total number of persons hired, 72 per cent were men and 28 per cent women (see annex 3: Statistics, C15).

168. Moreover, the Ministry of Foreign Affairs, Trade and Integration has expressed its interest in participating in Migration for Development in Latin America, a project funded by Italian Development Cooperation and IOM with a view to promoting joint development projects with Italy. Ecuador is part of the Project for the Development of Labour Migration Tools, funded by IOM, which seeks to build labour migration management capacities.

169. **Articles 38 and 39 on the Right to be temporarily absent without effect upon authorization to stay or work, the right to liberty of movement and to choose one's residence in the territory of the State of employment (8.2)** (see paragraph 40). Taking into account the obligations that must be met by migrant workers in their country of origin, article 36 of the regulations governing the Aliens Act establishes that "any (resident) immigrant who is legally registered may be absent from and return to the country, but may not remain abroad for more than 90 days each year in the first two years following the date of admission as an immigrant or more than 18 consecutive months at any time without losing his or her migration status and having his or her documents cancelled".

170. **Articles 40, 41 and 42 on the right to form associations and trade unions; the right to participate in public affairs of the State of origin and to vote and stand for election in that State; procedures or institutions through which account may be taken of the needs of migrant workers and the possible enjoyment of political rights in the State of employment (8.3)** (see paragraphs 43, 136–138 and 117–118). An increase in the active participation of Ecuadorian migrants abroad has been noted: in 2006, 143,352 Ecuadorian emigrants voted in the elections of the President and Vice-President; in 2007, 152,180 voted in the elections for seats in the National Constituent Assembly; in 2008, 157,003 voted in the referendum to approve the new Constitution; in 2009, 184,584 voted in the elections for President, Vice-President members of the National Assembly at home and abroad, and members of the Andean Parliament. The Ministry of Foreign Affairs, Trade and Integration, SENAMI and the National Electoral Council have coordinated their work in this area (see annex 3: Statistics, C16).

171. **Articles 43, 54 and 55 on the principle of equality of treatment with nationals of the State of employment in relation to the issues indicated; equality of treatment in respect of protection against dismissal, unemployment benefits and access to public work schemes and alternative employment; and equality of treatment in the exercise of a remunerated activity (8.4)** (see paragraphs 153–165).

172. **Articles 44 and 50 on protection of the unity of the families of migrant workers and family reunification of migrant workers with their families, and consequences of death or dissolution of marriage (8.5)** (see paragraphs 37, 39, 41, 115–117, 121 and 122). With regard to family unity, secondary legislation authorizes foreigners who hold immigrant or non-immigrant visas to host their children, spouse and their dependent relatives by blood or by marriage for the purpose of protecting the unity of the family.

173. The National Institute of Statistics and Censuses (INEC) issued 2,802 9-VI visas for dependants in 2007, of which 1,002 were for Colombians, 209 for Peruvians, 161 for Cubans, 125 for North Americans and 93 for Chinese. In 2008, 2,609 9-VI visas were

issued, of which 837 were for Colombians, 191 for Peruvians, 231 for Cubans and 76 for Chinese. As of June 2009, 2,016 9-VI visas had been issued. The records show that there was a threefold increase in the number of visa approvals for Cuban citizens (652) over 2008 by the middle of the year; 466 visas were granted to Colombians, 107 to North Americans and 209 to Peruvians (see annex 3: Statistics, C17).

174. Between 2007 and June 2009, a large percentage of such visas were granted to persons from Colombia.

175. With respect to the question of asylum, the principle of family unity is set forth in article 17 of Executive Decree No. 3301/1992. A directive is being formulated that takes into consideration international standards, cultural variables, and the family member's degree of economic and emotional dependence. In 2007, 231 applications for reunification were accepted and 4 were rejected. In 2008, 295 were accepted and 8 rejected.

176. **Articles 45 and 53 on equality of treatment for members of the families of migrant workers in relation to the points indicated, measures taken to guarantee the integration of children of migrant workers in the local school system and the right of members of a migrant worker's family to freely choose a remunerated activity (8.6)** (see paragraphs 153–162).

177. **Articles 46, 47 and 48 on Exemption from import and export duties and taxes in respect of personal effects, the right to transfer earnings and savings from the State of employment to the State of origin or any other State, and the imposition of taxes and measures to avoid double taxation (8.7)** (see paragraph 121).

178. **Articles 51 and 52 on the right of migrant workers who are not permitted freely to choose their remunerated activity to seek alternative employment in case of termination of the remunerated activity for which they were admitted, and conditions or restrictions for migrant workers who have the right freely to choose their remunerated activity (8.8)** (see paragraphs 153 and 154).

179. **Articles 49 and 56 on authorization of residence and authorization to engage in a remunerated activity, and general prohibition and conditions of expulsion (8.9)** (see paragraphs 40 and 154).

D. Parts V and VI of the Convention⁷⁴

180. **Article 65 on appropriate services to deal with questions concerning the international migration of workers and members of their families (10.1)** (see paragraphs 56–93, 58, 61–67, 115–122, 146–152, 167–169 and 189–198). Through the joint action of the Ministry of Foreign Affairs, Trade and Integration and SENAMI, the Ecuadorian Programme on Migration Policy seeks to introduce a new way of looking at and understanding international migration at the bilateral and multilateral levels within the framework of the National Human Development Plan for Migrants.

181. At the multilateral level, Ecuador has been active in various forums. Within the framework of the Andean Community of Nations, it was involved in the creation of the Andean Forum on Migration and in the Forum's development of the consensus-based Andean Human Development Plan for Migration, which is underpinned by the following strategic principles: the preparation and updating of legislation; information-gathering for use in the design of public policies; administrative management in accordance with

⁷⁴ The State party should describe provisions or measures adopted for the particular categories of migrants indicated in articles 57–63 of the Convention, if any.

established standards and policies; and the development of an action plan. It also takes part in the South American Conference on Migration, which is working on a plan for South America and is expected to join the Union of South American Nations (UNASUR). Ecuador also maintains a strong presence in the Global Forum on Migration and Development, as well as in MERCOSUR and in the biregional dialogues between the European Union and Latin America and the Caribbean and between the European Union and the Andean community.

182. At the bilateral level Ecuador expects to enter into 15 international strategic partnerships this year focusing on the development of a comprehensive people-based migration policy. Ten alliances and agreements had been signed as of September 2009, among them a memorandum of understanding on cooperation in consular and migration matters with the Federal Public Service for the Interior of the Kingdom of Belgium (13 January 2009); a cooperation agreement with the Studio Legale Berretti, Gorla, Soldano, Vitale (Italy, 13 February 2009); a cooperation agreement with the Government of Paraguay (23 March 2009); a cooperation accord with the Federation of Christian Organizations for International Volunteer Service (FOCSIV) (Italy, 23 April 2009); a letter of intent with the Comunità di Sant'Egidio (Italy, 16 June 2009); a letter of intent with Soletterre Onlus (Italy, 17 June 2009); and a letter of intent with the Fondazione Movimento Bambino (Italy, 19 June 2009).

183. The Ministry of Labour Relations promoted the establishment of the Andean Labour Observatory in 2001. The database was created in 2005 and is to be strengthened and expanded by 2010 as part of the strategic line of action for data generation set out in the Andean Human Development Plan for Migration. In addition, an international seminar on international labour standards for judges, jurists and law professors was held in 2009 with a view to sharing tools for the application of international labour law and, in particular, ILO standards in daily practice.

184. **Article 66 on authorized operations and bodies for the recruitment of workers in another State (10.2)** (see paragraphs 167–169 and 189–198).

185. **Article 67 on measures regarding the orderly return of migrant workers and members of their families to the State of origin, their resettlement and cultural reintegration (10.3)** (see paragraphs 61–67 and 115–122).

186. **Article 68: Measures to prevent and eliminate illegal or clandestine movements and employment of migrant workers in an irregular situation (10.4)** (see paragraphs 129–135). Ecuador is seeking to contribute to United Nations migration-related initiatives and is particularly interested in the adoption of a comprehensive approach to protecting the victims of human trafficking and migrant smuggling. The country has requested that a national expert be involved in drafting the model law on the smuggling of migrants, an initiative which constitutes part of the technical assistance activities of the United Nations Office on Drugs and Crime (UNODC). Ecuador is the only country that has a national expert working on that project. The Government of Ecuador calls upon the United Nations system to ensure that all such drafting projects take into consideration regional issues and involve consultations with national experts so that the end result will reflect regional conditions, approaches and experiences, as well as the relevant legal systems.

187. At the national level, the Public Prosecutor's Office includes a Migrant Smuggling Crime Unit. In 2006, 53 per cent of the cases that came before it involved migrant smuggling; 22 per cent concerned possession of forged documents; 17 per cent dealt with the defrauding of migrant workers; and 8 per cent had to do with forgery. In 2007, 44 per cent of the cases concerned the defrauding of migrant workers; 31 per cent involved migrant smuggling; 12 per cent had to do with the deportation of migrants; 6 per cent dealt with possession of forged documents; 6 per cent were forgery cases; and 1 per cent

concerned electronic forgery. In 2008, there were 208 reported cases of migrant smuggling, 193 investigations opened, 38 cases dismissed, 98 pretrial hearings held, 17 cases in which no charges were lodged, 88 in which charges were filed, 2 accelerated proceedings, 68 committal orders, 31 stays of proceedings, 32 convictions, and 6 acquittals (see annex 3: Statistics, C18).

188. **Article 69 on measures taken to ensure that migrant workers who are within the territory of the State party and are in an irregular situation do not remain in that situation and circumstances that should be taken into account in regularization procedures (10.5).** Establishment of mechanisms for regularizing the situation of migrants: as part of a binational agreement between Ecuador and Peru, a number of mechanisms have been established for regularizing the situation of Peruvian migrants in Ecuador and of Ecuadorian migrants in Peru. The Ecuador-Peru Regularization Agreement of 2006 covers agricultural workers, construction workers and domestic servants in the areas of Azuay and Cañar in Ecuador and in Lambayeque, Amazonas and Loreto in Peru. The coverage of this agreement was expanded in 2007 to include all legal employment relationships in Loja, El Oro, Sucumbíos, Napo, Morona Santiago, Orellana, Pastaza and Zamora Chinchipe, in addition to the areas in Ecuador covered by the previous agreement. Furthermore, deportations or expulsions for migration-related offences in the Extended Border Integration Region were halted until the close of 2009 and fines were abolished. This provision was incorporated into the Ecuadorian Migration Statute of 2008, which broadens the scope of existing migrant regularization agreements. The Migration Statute is currently under review in the two countries' legislatures, and the Ministry of Labour Relations is drafting its implementing regulations.

189. The Round Table on Labour Migration, the Ministry of Labour Relations, the Ministry of Foreign Affairs, Trade and Integration and IOM have conducted campaigns in the southern provinces for the purpose of providing information on the benefits offered by these agreements. Mobile regularization units operating in the Extended Border Integration Region (2007 agreement) registered 561 Peruvian citizens in 2007, 1,328 in 2008 and 329 in 2009 as of August (see annex 3: Statistics, C19).

190. The Round Table on Labour Migration has also carried out a study on the needs of migrant workers and the best methods for promoting the regularization of migrants.

191. The Ministry of Labour Relations is currently drafting a binational booklet on the implementation of the Ecuador-Peru Permanent Migration Statute in order to inform citizens and public authorities about migration procedures, including visa requirements, family reunification arrangements and changes in migrant status.

192. Efforts have also been made within the Andean Community of Nations to bring about the full implementation of the Andean Labour Migration Instrument, Decision No. 545 and the Andean Social Security Instrument, under which Andean migrant workers may validate the periods in which they have worked in both the country of origin and the receiving country in cases where no pre-existing regulation governing social security benefits is in force.

193. A memorandum of understanding on cooperation in consular and migration matters has been signed by Ecuador and Belgium. This agreement provides for the regularization of Ecuadorians in Belgium who are in an irregular situation and guarantees full respect for the human rights of migrants. The Government of Belgium will also collaborate with the voluntary repatriation programmes set up by SENAMI.

194. *Expanded registration* (see paragraphs 27 and 38): In September 2008, the Government of Ecuador launched a policy providing for expanded registration procedures for Colombian asylum-seekers in Ecuador. This procedure is designed to offer refugee status to more than 50,000 Colombian citizens living in Ecuador who are in need of

international protection and who, because they suffer from economic hardship, are unfamiliar with the institution of asylum or are fearful or mistrustful, have never applied to the Ecuadorian authorities for regularization of their status as migrants. The Government of Ecuador launched this initiative on 23 March 2008 in the northern border region, with the assistance of the Office of the United Nations High Commissioner for Refugees (UNHCR), for the purpose of regularizing the situation of Colombians who have fled their country seeking refuge. During the first phase of the expanded registration programme, from 23 March 2008 to 4 July 2009, the Government issued 10,603 refugee visas. In the second phase, some 23,000 Colombians will be registered.⁷⁵ Thanks to these measures, protection is now starting to be provided for the rights of this formerly invisible population group in the northern border region.

195. Temporary Eligibility Committees have been set up in areas of the country that require priority attention. These committees are using this more flexible procedure to determine applicants' eligibility. About 124 cases are processed each day. As a first step, people are registered and interviewed by officials of the General Directorate for Refugees (DGR)⁷⁶ of the Ministry of Foreign Affairs. On the same day as the interview takes place, the corresponding Eligibility Committee decides whether or not to grant a refugee visa, which will allow the person to enjoy all the rights available to non-citizens.

196. UNHCR provides support to the Government in the areas of technical assistance, humanitarian aid, community projects and resettlement programmes. Its efforts have led to the adoption of new public policies and legislation that conform to international standards. UNHCR also participates in the Eligibility Committees as an observer. Through its work in this area, it has made a valuable contribution to technical discussions and has helped to achieve one of the highest recognition rates in the region. UNHCR distributes humanitarian assistance in the form of an average of 7,500 monthly food rations supplied by the World Food Programme (WFP), in addition to medicines and other goods. It is also carrying out community support projects to provide structural improvements, school materials and equipment, medical clinics, local training programmes and local integration activities such as fairs and sports and cultural activities.

197. UNHCR has developed a self-sufficiency and local integration programme called "Cities of Solidarity", which works to prevent secondary population movements, to protect the rights of refugees more effectively and to help them integrate into urban society.

198. **Article 70 on measures taken to ensure that the living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety and health and principles of human dignity (10.6)** (see paragraphs 34 and 153–165).

199. **Article 71 on repatriation of the bodies of deceased migrant workers or members of their families and compensation matters relating to the deaths of migrant workers (10.7)** (see paragraph 150).

⁷⁵ Ministry of Foreign Affairs, Trade and Integration, see http://www.mmree.gov.ec/pol_exterior/refugiados.asp (page visited on 5 August 2009).

⁷⁶ Most interviews of asylum-seekers take place in Quito; DGR also periodically sends teams into other cities, however, including San Lorenzo, Tulcán, Ibarra, Esmeraldas, Santo Domingo de los Tsáchilas, Lago Agrio, Chical, Lita, El Coca, all of which are located along the border with Colombia. There are DGR offices in the cities of Quito, Cuenca and Lago Agrio.

IV. Challenges and outlook

200. Ecuador submitted its initial report on 16 November 2006. On 5 December 2007, the Committee recognized Ecuador's efforts to promote and protect the rights of Ecuadorian migrant workers abroad and offered its concluding observations (subsequently issued as document CMW/C/ECU/CO/1). The responses of the Government of Ecuador to those observations follow.⁷⁷

201.

<i>Number</i>	<i>Recommendation</i>	<i>Challenges and outlook for Ecuador</i>
9, 27	Bring national legislation that has not yet been amended accordingly into conformity with the Convention.	The Constitution adopted in 2008 demonstrates that progress has been made. It is vitally important to translate the provisions of constitutional law into laws, decrees, regulations, ordinances, agreements, resolutions and other acts of State and governmental decisions. The drafting of the law or code on the movement of persons represents a valuable opportunity to do so (see paragraphs 54 and 55).
9, 17, 18	Carry out awareness-raising programmes for authorities and public officials.	For strategies used, see paragraphs 100–103, 110–113 and 118.
11, 13	Consider making the declarations provided for in articles 76 and 77 of the Convention. Recognize the competence of the Committee to receive communications from States parties and individuals.	The Government of Ecuador, which is undertaking a complex structural reorganization of the legal system, will pursue ways of generating a debate with respect to these recommendations.
15	Create a sound database in line with all aspects of the Convention which is as fully disaggregated as possible.	The Government is working in a number of areas with various agencies on the development of tools of this kind (see paragraphs 19, 76, 90, 122, 130, 182 and 184).
20	Intensify efforts to ensure Convention rights and consider reviewing the policy of asking Colombian citizens for a certificate of criminal record as an entry requirement.	On 1 June 2008, the requirement for a certificate of criminal record was abolished by the Government of Ecuador. However, this requirement was later reinstated under Executive Decree No. 1471, published in issue No. 490 of the <i>Registro Oficial</i> on 17 December 2008, and the Government therefore still has much work to do in this regard, as has been noted by a number of agencies, in particular the Office of the Ombudsman. This point is covered in the report (see paragraph 126).
21	Eliminate the exit permit, in accordance with article 8 of the	In 2007, the exit permit was abolished for all Ecuadorian citizens and foreigners. Persons wishing

⁷⁷ Information based on the analysis contained in the instructional manual on the Convention that SENAMI is preparing in cooperation with IOM as part of the training kit. (Consultant: Adriana Montenegro, 2008).

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	Convention.	to leave the country are simply required to present, at airport and border checkpoints, a passport or an identity card, a residency permit or visa (if the destination country so requires). For other measures, see paragraph 123.
22	Ensure that migrant workers and members of their families detained for violating migration-related provisions are held separately from convicted persons or persons detained pending trial. ⁷⁸	The Government of Ecuador is working to improve conditions for migrant workers and members of their families (see paragraphs 55 and 140).
24	Establish expulsion and deportation procedures that are in accordance with the Convention and the Constitution (IA).	Efforts have been made by the Ministry of the Interior to formulate a deportation protocol. The process of preparing legislation on this subject has begun (see paragraphs 54, 152 and 189).
29	Ensure that migration control measures do not undermine the safeguards granted by the 1951 Geneva Convention relating to the Status of Refugees.	Under the expanded registration programme provided for in the Government's policy on refugees, measures to protect the rights of the formerly "invisible" groups of migrants in the northern border area are being taken (see paragraphs 27 and 195).
31	Continue to work towards the elimination of all hazardous forms of labour for migrant children.	In this regard, see paragraphs 81, 83, 134 and 135.
33, 34	Intensify efforts to prevent and combat the traffic in children and all forms of sexual exploitation of children, to protect children from such treatment and to restore their rights.	For actions taken, see paragraphs 73, 75 and 129–135.
36	Take appropriate measures to ensure that access to education is guaranteed to all migrant children.	The Government replies to this recommendation in the report (see paragraphs 80 and 163–165).
38	Continue efforts to protect female migrant workers (IA).	See paragraphs 77–79, 189–192 and 195.
40	Strengthen efforts to ensure that all migrant workers and members of their families enjoy in practice any medical care that is urgently required.	See paragraphs 53 and 158–162.
42	Take measures to guarantee the right of migrant workers and their families to form and join trade unions.	The Government of Ecuador is currently undertaking a structural reorganization of the institutional, policy and legislative systems which will entail the

⁷⁸ The alternative report states that the necessary administrative measures should be taken to set up detention centres specifically for migration-related offences, apart from those holding convicted persons or persons awaiting trial.

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		amendment of the Labour Code (see paragraphs 136–138).
44	Intensify efforts to counter trafficking in persons and smuggling of migrants.	See paragraphs 73–79, 129–135 and 187–188.

202. The Government of Ecuador wishes to inform the Committee that, in addition to the information provided by public bodies, it has also gathered comments from members of civil society in Quito and Cuenca. In its view, working together with civil society is one of the best ways of galvanizing institutional processes and ensuring that they meet the needs of the population. It therefore wishes to report on the challenges brought forward by civil society:

(a) Ecuadorian legislation should be revised as a matter of urgency with a view to protecting and guaranteeing the human rights of all people in movement within Ecuadorian territory;

(b) Legislative and regulatory reforms should be accompanied by the development of a statistical information system which will track the progress made by the Government of Ecuador in the area of human rights;

(c) The Government of Ecuador should take specific action in the area of immigration that builds upon the work done thus far in the area of emigration and that expands the coverage of the programmes it provides for Ecuadorians living abroad to include foreigners living in Ecuador as well;

(d) Concrete steps should be taken to eliminate all categories of discrimination in the print and visual media, including the Internet;

(e) Bilateral and/or multilateral initiatives should be undertaken with neighbouring countries to strengthen existing agreements with a view to addressing the issues faced by people in movement;

(f) The Government of Ecuador is working to uphold the rights of people in movement and will continue to do so; it must endeavour, on an ongoing basis, to overcome the challenges posed by the situation of migrants.
