



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

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

Summary record of the 103rd meeting

Held at the Palais Wilson, Geneva, on Wednesday, 22 April 2009, at 3 p.m.

Chairperson: Mr. El Jamri

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 73 of Convention (agenda item 3) (continued)

Initial report of Colombia (continued)

1. *At the invitation of the Chairperson, the members of the delegation of Colombia took places at the Committee table.*

2. **Ms. Vargas** (Colombia), replying to the questions asked the day before, said that the Administrative Department of Security (DAS) was responsible for the coordination of migration policy at the local, regional and national levels, at each of which it had branches. For the coordination of programmes, the Government took account of contributions made by the Colombian public universities, the National Intersectoral Migration Commission and civil society. At present, the programmes focused on five areas, namely links among Colombians abroad and their communities at home, prevention of trafficking in migrants, families of migrants, circular and temporary migration and technical cooperation.

3. The Convention was disseminated through the organization of seminars and workshops in Colombia and abroad. For example, information workshops on the integrated migration policy and the participation of the public had been organized in 2008 in Quito, Madrid, Caracas, New York and Miami. The various Colombian services concerned were informed about the Convention and, together with civil society, they promoted the holding of seminars, forums and workshops on migration issues. The Government had set up a training programme for officials from 32 regional offices and specialized agencies of the Ministry of Social Protection. Training in the handling of migratory flows was organized in border areas.

4. Regarding studies on migration and children, she said that the Ministry of Foreign Relations had concluded agreements with the country's major universities to enable researchers and students to concentrate their work on migration, children and the family and inform it of the results. In 2009, the Pontifical Xavierian University had been asked to carry out a study on childhood, the family and migration in the coffee industry. One of the studies had shown that most children separated from a parent (usually the father) suffered from affective disorders.

5. Turning to the issue of expulsion or deportation, she said the procedure was carried out with the assistance of the country of origin's consulate. The alien to be expelled might be held in preventive detention in the facilities of the Administrative Department of Security (DAS) until the expulsion was carried out, but only for a maximum of 36 hours. Collective expulsion was not expressly prohibited by law, it was true, but no regulation specifically authorized it either. Furthermore, an analysis of articles 101 and 102 of Decree No. 4000, governing the entry and stay of aliens in Colombian territory, showed that expulsion orders were intended for individuals. Thus, Colombia did not practice collective expulsion. Concerning the distinction between "*deportación*" (deportation) and "*expulsión*" (expulsion), she explained that "*deportación*" was a penalty ordered by the migration control authorities (DAS) and was accompanied by a ban on entering the country of from 6 months to 10 years; the only remedy available was administrative. "*Expulsión*", on the other hand, was a more serious penalty that could be ordered by the migration control authorities or by a judge; it was accompanied by a minimum ban of five years on entry into Colombia. If the order was adopted by a judge, no remedy was possible.

6. As to the reception that migrants were given, a convention between the General Labour Confederation and the International Organization for Migration (IOM) had been signed within the framework of a cooperation agreement between the Ministry of Social Protection and IOM with the objective of combining efforts to set up and administer a

Migrant Information and Support Centre (CIAMI). The Centre, inaugurated in 2008 in Bogotá, worked to promote orderly migration and monitor respect for human rights in countries of origin, transit and destination. In Colombia, the right to health of migrants was guaranteed on the same basis as that of Colombians. The State carried out general public health campaigns with no discrimination whatsoever. It was provided by law that all workers, including migrants who had signed a labour contract, had to be affiliated with a health insurance scheme.

7. In order to prevent irregular migration, the Colombian authorities had organized information campaigns using the media and posters in airports and at border crossings. The Colombian Family Welfare Institute (ICBF) was currently drafting a text on verification of identity and travel papers that would enable the documents of minors leaving the country to be better monitored. When Colombian migrant workers were held in detention abroad, depriving their offspring of parental protection, the authorities of the country concerned so informed the Colombian consulate which, together with ICBF, organized the return of the minor to Colombia so he or she could be placed in a shelter or handed over to someone from the extended family. It was true, however, that her country needed to look into keeping records of the repatriation of minors by the various consulates.

8. The struggle against human trafficking was being waged in collaboration with IOM. Assistance to victims was governed by Act No. 1985 of 2005. Under the Ministry of the Interior and Justice, there was an anti-trafficking operations centre that administered the shelters in the major towns to which victims of trafficking, both Colombians and foreigners, were sent. There was nothing to indicate that guerilla groups and so-called “paramilitary” or defence organizations targeted irregular migrants, and no direct link had been established between the activities of those groups and trafficking in human beings, in which transboundary organized crime could be more readily implicated. An increase had recently been observed in the number of persons of Chinese nationality or African origin transiting through Colombia to reach the United States. In some cases they were victims of trafficking in migrants. Investigations were undertaken to find and prosecute those responsible; the embassies of the countries of origin of the victims were informed and Colombia organized their repatriation with the help of IOM.

9. She thought that the only way Colombia could encourage the receiving countries of migrant workers to ratify the Convention was to formulate recommendations in international institutions such as the Human Rights Council, particularly during the consideration of the universal periodic reviews.

10. Under article 58 of the Constitution, which guaranteed the right to private property, goods could be expropriated or confiscated only in specific situations and pursuant to legislation expressly stating that measures in the public interest, such as the construction of an airport or a road, necessitated such expropriations. Such legislation had to be adopted when infrastructure development was obstructed by owners of buildings on the spot who refused to sell their property. In the event of expropriation, the owners were compensated on an equal footing, whether they were Colombian or aliens.

11. With regard to the reservations, which she preferred to call interpretative declarations, formulated by Colombia with regard to articles 46 and 47 of the Convention, she said they had been motivated by her country’s belief in equal treatment of Colombian citizens and migrant workers, which meant that migrant workers could not be allowed to transfer their earnings and savings at preferential rates.

12. Colombia’s migration policy did not cover Colombians living abroad. Steps had been taken to facilitate the lives of migrant workers in Colombia, particularly aliens in vulnerable situations, to increase awareness among Colombians about migration issues and to give aliens easier access to information technology. Aliens residing in Colombia could

receive study grants just like Colombians. Information seminars on human trafficking that were organized at the national and international levels, in which Colombia shared its experience with other countries such as those of the Caribbean and Chile, were aimed at providing assistance to Colombian as well as to foreign victims of trafficking. The integrated migration policy pursued the principle of non-discrimination and benefited aliens as much as Colombians.

13. The Andean Council of Ministers of Foreign Affairs, of the Andean Community, had adopted a number of decisions aimed at guaranteeing the freedom of movement of persons in the territory of member States. According to one of those decisions, nationals of countries of the Andean subregion could travel in the territory of member countries using only their national identity card, which was also valid for administrative or legal formalities. The measure was primarily aimed at tourists, as it authorized stays without a visa for up to 90 days in a member country. The Andean migration card had been created to provide for statistical monitoring of migratory flows in the countries of the Community. As to long-term migration, she said that Decision No. 545 of 2003, adopted by the General Secretariat of the Andean Community and entitled “Andean Labour Migration Instrument”, provided for the gradual establishment in member States of provisions to permit the unhampered movement and temporary residence of Andean nationals in the subregion for professional purposes on an equal footing with nationals. In addition, the Andean Social Security Instrument was intended to guarantee the social welfare of migrants and of members of their families.

14. The Colombian authorities were aware that the expulsion of a migrant worker who failed to pay his or her debts was an unsatisfactory practice, both for the creditor and the debtor. The Colombian legislation that applied to migrants generally pre-dated the Convention, as did the guarantees incorporated into the Constitution — the Constitution had been adopted in 1991 whereas the Convention had been ratified in 1995 — but there were nevertheless some instruments that post-dated the ratification of the Convention. Colombian migrants had not been affected by the events of 11 September 2001. Colombian migratory flows to Europe and the United States had remained stable since 1998. Since the quantity of migrants in Colombia was not very large, there were no specialized agencies for the placement of migrant workers and no abuses had been observed in that area. No provisions aimed at reducing the scope of the Convention had been adopted. In some respects, the Colombian constitutional regime had a much broader scope than that of the Convention.

15. In conclusion, she said that the only civil rights whose exercise by foreigners were restricted were linked to the acquisition of property in border areas, which was subject to special regulations.

16. **The Chairperson**, speaking as a member of the Committee, said it would appear that the Colombian reservations to articles 15, 46 and 47 of the Convention were the result of a misunderstanding, since those texts were in no way incompatible with the provisions of the Colombian Constitution.

17. **Ms. Vargas** (Colombia) said it was true that it was more a matter of interpretative declarations made by the Constitutional Court on articles 15, 46 and 47 than of actual reservations.

18. **Ms. Cubias Medina** (Country Rapporteur) said she wondered whether the fact that no remedies were available to migrant workers who were under expulsion orders constituted a violation of the right to due process, and particularly of the right to a defence. She would like to hear the Colombian delegation’s views on that score. Referring to the situation of children of migrant workers in Colombia, she said that as she understood the information provided, they could not acquire Colombian nationality. Had there been any

cases when children had been left stateless because they could obtain neither Colombian nationality nor the nationality of their parents' country of origin? She welcomed Colombia's decision to open a centre for migrants but wished to know a bit more about the facilities of the Administrative Department of Security (DAS). She requested information on the Chinese illegal migrants who had been detained by the Colombian authorities while transiting through Colombia to the United States. She also wondered why, of the 90,000 aliens registered in Colombia, only 1,351 had signed up to exercise their right to vote in local elections. Lastly, she wished to know whether the State party engaged in follow-up of the programmes and campaigns it carried out to combat human trafficking.

19. **Mr. Alba** asked whether Colombian citizens could hold dual nationality and requested more information on the agreements signed by Colombia and Spain that might affect migrant workers.

20. **Mr. Sevim** said that under article 39 of the Colombian Constitution, workers had the right to form trade unions or associations without interference by the State. As he understood that provision, it applied to migrant workers, and he wished to know whether it also applied to workers in an irregular situation.

The meeting was suspended at 4.30 p.m. and resumed at 4.55 p.m.

21. **Mr. Garzón** (Colombia) said that Act No. 1070, which gave foreigners residing in Colombia the right to vote in municipal elections and referendums, had been adopted only in 2006 and had been applied for the first time in the elections of October 2007; that explained why only 1,500 foreigners had had the time to complete the formalities necessary to vote. Colombia authorized its citizens to hold dual nationality.

22. Although Colombian legislation protected foreign investors, in certain exceptional circumstances the State had had to resort to expropriation to preserve national sovereignty and maintain public order. Colombia had signed two agreements with Spain: the first gave Colombian workers in Spain the opportunity to undergo short training courses, and the second, on reciprocity in social security matters, allowed Colombian workers to conserve the contributions they had made during their years in Spain if they decided to return to Colombia. Since the Ibero-American Summit in 2007, all the countries of the Ibero-American Community of Nations had signed a social security agreement. About 3 million Colombian nationals worked abroad, and their remittances were the second source of revenue for the country, after petroleum. The Colombian Constitution and legislation guaranteed workers the right to join a trade union, but that possibility was not open to irregular migrant workers. In any event, 98 per cent of the migrant workers in Colombia were in a regular situation. Migrant workers who were not accepted into a trade union could bring constitutional protection proceedings in order to enforce their rights.

23. **Ms. Vargas** (Colombia) said that unlike deportation, which was the result of an administrative act by the Administrative Department of Security (DAS) and could be subject to an appeal for review, expulsion was a penalty that was ordered by a judge as a supplement to a custodial sentence. In Colombia, as in many other countries, an expulsion order could not be appealed.

24. A child born in Colombian territory to foreign parents in an irregular situation could have his or her birth inscribed in the civil register, but could not obtain Colombian nationality unless the nationality of one of the parents had already been acquired. Instances of statelessness were rare, but complex, and so far they had been solved on a case-by-case basis, pending the adoption by the Congress of the Republic of the Convention on the Reduction of Statelessness and the Convention relating to the Status of Stateless Persons.

25. The Administrative Department of Security (DAS) did not automatically place migrants who were in an irregular situation in its holding facilities: it could opt to release

them under supervision. With respect to the Chinese workers that had been the victims of illegal trafficking of migrants transiting through Colombian territory, the authorities had had to carry out an investigation to establish responsibility and inform the Chinese consular services of the situation so that they could assist their nationals. The situation had arisen several times during the period when the visa requirements for Chinese nationals had been lifted. In difficult nationality cases, the Colombian authorities might ask IOM to help find a solution.

26. The disparity between the number of aliens registered in Colombia and the number on the electoral rolls could be explained by the facts that inscription was voluntary and that the approximately 90,000 aliens resident in Colombia included a great many minors, who obviously did not have the right to vote. Any worker, Colombian or foreigner, had the right to join a trade union, but it was understandable that workers in an irregular situation might not wish to do so, for fear of attracting attention. A trade union that rejected the application of a foreign worker to join could be reprimanded by a court if it considered the grounds for refusal to be discriminatory. In some instances a court had made a trade union change admittance regulations that it considered discriminatory.

27. Lastly, she said that the phenomenon of human trafficking was of course under close surveillance by the police, which kept records of each case, more with a view to getting an idea of the size of the problem than to gathering precise statistics on how it evolved from one year to the next.

28. **Mr. Taghizadet** asked how the assistance provided to illegal migrant workers was organized, and specifically, how they could be assured of receiving a pension.

29. **Mr. Garzón** (Colombia) explained that through the “Colombia Nos Une” (“Colombia Unites Us”) programme, a Colombian worker abroad could make personal contributions to a pension fund under the Colombian social security scheme. The agreement with Spain covered illegal workers in that country, but was non-reciprocal. All Colombians could draw retirement benefits from the age of 65 for men and 60 for women and after 20 years of contributions. Similar agreements should be made with other countries to make it possible to combine the contributions paid in the country of origin and in the receiving country. For primarily fiscal reasons, the ministries concerned were often unwilling to contemplate such agreements. The objective must therefore be to make them understand the importance of the issue for the well-being of workers in general, including for illegal Colombian workers, in that it was a way of regularizing their situation.

30. **Ms. Cubias Medina** (Country Rapporteur) said she welcomed the replies provided by the Colombian delegation, which had given members of the Committee a good understanding of how Colombia went about the process of defending the interests of its nationals abroad. She applauded the progress made in migration matters, as demonstrated both by the many plans, programmes and policies put in place and by the definite will shown to open Colombia up to the outside world through a suitable policy on visas. She hoped that the policy on regularization of migrants in an irregular situation that was soon to be implemented, as well as the steps to combat trafficking in persons, would be a success. The Committee would undoubtedly recommend that the Colombian Government establish a permanent training programme for the police, migration authorities and judicial bodies specifically focusing on the Convention. In addition, the compatibility of the concepts of deportation/expulsion with the Convention’s provisions would have to be examined. The Committee would greatly look forward to the results of the study aimed at determining the impact of migration on children and would be very interested in the steps to be taken as a result. It would be useful for the Colombian authorities to keep a register of individuals transiting through the country so as to have precise statistics which, when broken down according to certain criteria, could shed light on the phenomenon of migration in Colombia.

31. The **President** reminded the Colombian delegation that the Colombian Government could at any time communicate to the Committee information on the follow-up to the recommendations that it would be making. He invited the Colombian authorities to pay particular attention to the most vulnerable groups of migrants such as women and unaccompanied minors. He encouraged Colombia both to work towards broader dissemination of the Convention at the regional level and encourage other countries to ratify it and to withdraw its reservations on articles 15, 46 and 47 of the Convention and accept the provisions of articles 76 and 77.

32. **Ms. Vargas** (Colombia) said that the questions and comments of members of the Committee would be extremely valuable in the drafting of the next report. In the interests of prolonging the dialogue begun with members of the Committee and of showing them what was actually being done in Colombia to disseminate the Convention more broadly, she invited those who were in a position to do so to participate in the workshops and seminars on the Convention that were to be organized. She emphasized that her country remained strongly committed, through its legislative arsenal and institutional mechanisms, to the defence of human rights and, in particular, of the rights of migrant workers and members of their families, whether they were in a regular situation or not.

The meeting rose at 5.40 p.m.