



**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
Thirteenth session**

Summary record of the 140th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 23 November 2010, 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 the Convention (*continued*)

Second periodic report of Ecuador (CMW/C/ECU/2; CMW/C/ECU/Q/2 and Add.1)

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

2. **Mr. Montalvo** (Ecuador), introducing his country's second periodic report (CMW/C/ECU/2), said that Ecuador's foreign policy was marked by total commitment to the respect, protection and promotion of human rights, and to the United Nations system in general. In particular, the Government attached priority to human rights issues related to migration. All relevant ministries and institutions had been involved in the preparation of the report that was before the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.

3. **Mr. Holguín** (Ecuador) said that Ecuador's migration policy was drawn up in conjunction with civil society, and was founded on human development, as illustrated by the pioneering National Human Development Plan for Migrants. Other countries' migration policies were inward-looking, and tended to focus on issues of national security or economic considerations. Ecuador's migration policy was supported by the 2008 Constitution, which included specific provisions on the rights of migrants. In particular, article 40 established the right to migrate, and article 9 established total equality between Ecuadorian nationals and foreigners. In the current context of globalization, the ultimate aim of migration policy was universal citizenship, where borders were to be seen as meeting points, and not as barriers or walls.

4. At the Tenth South American Conference on Migration, held in October 2010 in Cochabamba, Bolivia, countries of the Southern Common Market (MERCOSUR) and the Andean Community had taken steps towards the establishment of a common migration space, where human rights — particularly the right to migrate — were respected and consolidated. Important commitments had been entered into in the area of the regularization of the situation of migrants, in order to combat the phenomenon of irregular migration, or "invisible" migrants, who had no rights.

5. Similar progress had been made at the Fourth Global Forum on Migration and Development, which had recently taken place in Puerto Vallarta in Mexico; following the round table on irregular migration, some 14 standards had been agreed upon between countries of origin and host countries.

6. Ecuador was making considerable efforts to implement the recommendations made by the Committee in respect of Ecuador's migration policy. However, the State party was in the paradoxical situation of having both a modern, rights-based Constitution and obsolete legislation dating from 1971, including the Migration Act and the Aliens Act. While Ecuador was currently working on bringing the legislation into line with the Constitution, that would take time, for there were more than 220 laws currently being processed by the National Assembly. Drafting of the new bill on migration and aliens, which was based on human development for migrants, had recently been completed and input was currently being requested from civil society.

7. On 28 November 2010 a national census would be carried out, for the first time in nearly 10 years. The new census would provide data on migration and on the population of Ecuador. Since the previous census, more than a million Ecuadorians had migrated. As part of the census, families had been asked for detailed information about family members who

were living abroad. The Committee would be provided with the information as soon as it was available.

8. The requirement for Colombian citizens to produce a certificate of criminal record had been reintroduced for reasons of national security. There was considerable criminal activity along the border between Ecuador and Colombia, including in drugs and arms trafficking and in trafficking in persons. A Colombian guerrilla group had crossed the border into Ecuador, which had led to the Ecuadorian side of the border being bombed, and Ecuadorians had been killed as a result. Relations had subsequently broken down between the two countries, and one of the consequences had been the reintroduction of the requirement for Colombian citizens to produce a certificate of criminal record. The two countries were currently in bilateral talks, however, with the aim of re-establishing good relations. The talks would shortly be concluded, and it was expected that the requirement to produce a certificate of criminal record would be abolished, and migration flows between the two countries restored.

9. Some 53,000 Colombian refugees were currently living in Ecuador. There had been some abuse of the refugee system, however, including the recruitment of Colombian children with refugee cards, living in Ecuador, and Ecuadorian children, as child soldiers by the Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo (Revolutionary Armed Forces of Colombia – People’s Army) (FARC-EP). It was therefore necessary to continue to carry out regular checks along the border.

10. Ecuador was disseminating the provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families to all Ecuadorians abroad via the *Casas Ecuatorianas*, as well as in the main provinces of origin of Ecuadorian migrants.

11. **Ms. Cubias Medina** (Country Rapporteur) commended the progress made by Ecuador in protecting the rights of its nationals abroad, and welcomed the establishment in the 2008 Constitution of the right to migrate, which was an important step towards the non-criminalization of migrants. She noted with satisfaction that a person could not be considered to be “illegal” on the grounds of his or her migration status, and welcomed the extension of the right to nationality to include not only the rule of *jus soli* but also the rule of *jus sanguinis*. Other positive factors included the memorandum of understanding on cooperation in consular and migration matters with Belgium, the mechanisms established for the regularization of the situation of Peruvian migrants in Ecuador and Ecuadorian migrants in Peru, and the ministerial decision guaranteeing access to education for foreign children and adolescents, regardless of their migratory status.

12. The Committee had been concerned to see, however, that most of the progress made concerned Ecuador as a country of origin. She asked whether information systems were in place that could provide figures on the number of migrants in Ecuador – both those in a regular situation and those in an irregular situation.

13. She asked what the state of progress was of the bill on human mobility, and for details of the corresponding inter-institutional commission. She would appreciate clarification of what was meant by “a comprehensive political approach ... to the issue of the movement of persons” in paragraph 7 of the report. While the National Human Development Plan for Migrants was to be commended, it would be interesting to compare what was being done for migrants living in Ecuador.

14. The Committee should be kept up to date regarding the issue of Colombian citizens having to produce a certificate of criminal record, including any plans to abolish that requirement if the security situation improved.

15. She asked how many holding centres for foreigners or migrants there were in Ecuador, and whether the level of health care, hygiene, food and social services was adequate. Were men held separately from women? Were children and adolescents held in the holding centres, or just adults? Were migrants held separately from convicted persons or persons detained pending trial? She would appreciate information on what the State party was doing to combat discrimination against Colombians and Cubans, including by public officials. She commended the programme for the regularization of migrants, and asked whether there were plans to extend the programme beyond the nationalities currently concerned, to include all undocumented migrants.

16. There had been an increase in the number of complaints of trafficking in persons and the corresponding investigations. However, there had been few convictions, and few sentences had been handed down. Did the State party envisage taking any steps to increase the rate of conviction?

17. She asked what checks were carried out to ensure that the labour rights of migrants in Ecuador — regardless of their migration status — were implemented. Were those checks carried out before a person could be expelled? She asked how due process was guaranteed in expulsion proceedings for migrant workers and, if a person was in the process of being expelled, what remedies were available to stay that process. What procedures were followed when a person against whom an expulsion order had been issued wished to apply for asylum? She welcomed the plan to implement policies designed to phase out child labour, and asked whether specific measures would be included to protect child migrants from being exploited for labour purposes.

18. Lastly, she asked if the State party was considering recognizing the competence of the Committee to receive and consider communications under articles 76 and 77 of the Convention, as Guatemala and Mexico had done.

19. **Mr. El-Borai** welcomed Mr. Holguín's frank acknowledgement that the Government was doing its best to bring Ecuador's domestic legislation into line with the Convention, including through the adoption of new legislation, though it had still not achieved all it might. The Committee would welcome an explanation of how closely the new legal provisions met the requirements of the Convention in respect of the trade union rights and social security rights of migrant workers, expulsions of migrant workers, the right of migrant children to education and other issues raised in the Committee's concluding observations on Ecuador's initial report.

20. **Ms. Miller-Stennett** asked if the National Secretariat for Migrants had made any progress with the information system it was designing (paragraph 19 of the report) and if it was a cause for concern that more Ecuadorians were leaving the State party than returning (para. 21): did the State party have any specific policies to encourage the voluntary return of its citizens? More information would be useful on the functioning of the expanded registration procedure for Colombian citizens who were reluctant to apply for refugee status. Noting that foreigners had the same rights as citizens of the State party but were subject to certain limitations on their political rights, entry to and exit from the country, residence and the acquisition of real estate, she asked if any measures had been introduced to remedy that situation.

21. It would be interesting to see statistics, if any were available, to support the information given in paragraph 37 on the rights of all persons, including migrants. The Government should be commended for its policies on protecting children, particularly from labour or economic exploitation (para. 39), and she would be interested to know if any further progress had been made in that respect.

22. She asked what was being done to encourage Ecuadorians living overseas to exercise their right to vote. Information would also be welcome on any progress made with

the bill concerning a comprehensive law on the movement of persons (paras. 54 and 55). Had any specific measures been taken to encourage foreign workers to become active in the trade union movement?

23. A large number of children of migrants in Ecuador were unregistered because their parents were not aware of their right to register children born in the country as Ecuadorians. What was being done to get the information to the people who needed it?

24. **Ms. Poussi Konsimbo** asked for clarification of the meaning of the phrase “no one shall be regarded as illegal on the basis of their migratory status” (para. 37), as it seemed to indicate that no migrants in Ecuador were considered to be in an irregular situation, which would go beyond the requirements of article 5 of the Convention. The report mentioned the right of foreigners who had been residing in Ecuador for five years to vote (para. 43) but did not specify in which type of elections; given the large number of foreigners in the country, they could have an influence on the country’s policies. She would appreciate further details, with examples and outcomes, on the procedure for providing comprehensive reparations for victims of human rights violations (para. 105). In particular, she would like to know if the procedure was open to migrant workers and their families.

25. The report indicated that the National Commission for the Protection of Migrants was to cease to exist and that its functions were to be assumed by a team within the Department of Protection. She was concerned that such a transfer of powers from a specialized body to one with a broader mandate could be seen as a retrogressive step that might lead to a loss of focus on the interests of migrants.

26. **Mr. Alba** noted with satisfaction that Ecuador’s report had been submitted just two years after the initial report and only a few months late. The size and composition of the delegation indicated the importance accorded by the State party to migration as an issue and to the implementation of the Convention. A further demonstration of the State party’s attitude was the fact that it had hosted the first Ibero-American Forum on Migration and Development in Cuenca in April 2008. The State party had a laudable vision for harmonizing its secondary laws with the Constitution and the articles of the Convention, but there was still much to be done in practice, as the delegation was clearly aware.

27. With regard to the State party’s strategic partnerships on international migration policies (para. 182), he noted that agreements had been signed with some countries. However, further clarification on such partnerships would be welcome.

28. The Committee had expected the report to focus on the recommendations it had made regarding the initial report, but the State party had taken a much broader approach; with the adoption of the new Constitution, it clearly wanted to consider the effects of the new situation. One concern about the new situation was that there seemed to be some loopholes in the structure of the Ministry of Justice and Human Rights that might lead to some issues, such as trafficking in persons, being overlooked. Was there a specific department responsible for the rights of migrants? In general, the new regulations lifting many visa requirements were generous, opening up new possibilities for many people, not only the country’s citizens.

29. **Mr. Sevim** noted that exit permits were no longer required for people wishing to leave the country, but there appeared to be a requirement that Ecuadorian citizens should present proof that they had completed their military service before leaving the country, and there were restrictions on minors leaving the country too. He would welcome clarification on that point, and on whether the new Constitution made any provision in respect of exit permits.

30. The State party’s initial report had indicated problems encountered by migrant workers in accessing adequate health services; he would like to know if the situation had

changed. He would also like to know if migrant workers could export their social security benefits when they returned to their own country.

31. **The Chairperson** asked how a distinction was made between the 53,000 documented refugees in the State party and migrants. While noting that the National Human Development Plan for Migrants was a very positive initiative, he asked to what extent it concerned, on the one hand, migrant workers in the State party and, on the other, Ecuadorian citizens working abroad. Many migrant workers would be returning to Ecuador because of the economic crisis, some with help from their host country: were arrangements being made for their return, for instance, by setting up development projects? In many cases, only the family returned, while the worker remained alone in the host country to work: were there any plans to deal with that situation?

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

32. **Mr. Holguín** (Ecuador) said that the majority of refugees in Ecuador were fleeing the conflict in neighbouring Colombia, where, as a result of fighting between insurgents, the Government's armed forces and paramilitary units, whole communities had been displaced, both internally and across the border into Ecuador, where they sought refuge under the 1951 Convention relating to the Status of Refugees, the Andean Community's Cartagena Agreement, and the Declaration of Mexico of the Fourteenth Inter-American Conference of Ministers of Labour of the Organization of American States. Certificates according refugee status were issued by a joint team of staff from the Ministry of Foreign Affairs and the Office of the United Nations High Commissioner for Refugees. That cooperation had reduced the waiting time for a certificate from two months to one. However, despite thus being entitled to all rights accorded to foreigners living in Ecuador, refugees still encountered some problems, notably in obtaining credit, as private companies and banks were unwilling to lend to individuals with no credit rating. The State party was trying to help refugees gain access to credit by adopting an inter-institutional approach and promoting public-private partnerships.

33. The National Human Development Plan for Migrants took the universal principles enshrined in human rights law as a basis for recognizing the rights of migrants, including the rights to migrate and to work and the rights to family reunification and social services. The Government had a responsibility to protect those rights and to give migrants every opportunity to integrate into the host society and thus avoid falling into situations of vulnerability. A similar human development plan for migration for the whole of South America had received unanimous support from the countries represented at the Cochabamba Conference; it had then been presented at the Puerto Vallarta Global Forum as a united initiative of all the Latin American countries, making the continent a standard-bearer for the human rights of migrants.

34. In respect of the return of migrant workers, a distinction needed to be made between the State party's humane return plan and returns resulting from the application of, for example, European directives. Ecuador's plan encouraged voluntary return, whereby the migrant workers and their families could take the decision without outside pressure. Time was taken for the return to be properly prepared, in consultation with the host country, which allowed migrants to bring back all the possessions they had acquired in the host country free of duty. Provision was also made for the education of the returnees' children, for the workers and their families to have automatic access to the national health scheme, and for their integration into the labour market. Measures to help them find work included access to credit from public banks for small or medium-sized business projects, especially projects proposed by groups of returnees, who would have access to larger loans and who would be able to export products to their former host country. Steps were being taken to ensure that the training in new technologies that returnees had acquired abroad was put to good use; returnees would be helped to find employment in similar workplaces where they

could pass on what they had learned to other Ecuadorians. There was also a pilot programme to provide returnees with up to US\$ 10,000 in a series of non-reimbursable payments for the very best business project initiatives. Local economies had been damaged by mass departures of emigrants; new economic development and new capital could be brought to those areas by migrants and their families returning to the places where they had previously lived.

35. **Ms. Cubias Medina**, referring to the killing of migrants in Tamaulipas, Mexico, in August 2010, asked what action had been taken by the Government of Ecuador in response, and what assistance it had provided to the Ecuadorian nationals involved. She asked if there had been any cooperation between Ecuador and the national Governments of the other migrants who had died, to ensure that the rights of the persons involved were respected. She wished to know whether, pending the new bill on human mobility, the Convention could be invoked directly before the courts, and whether the Convention took precedence over legislation such as the Aliens Act or Migration Act. She also wished to know if the Government was considering the possibility of an amnesty for migrants from neighbouring countries who were in an irregular situation. It would be useful for the Committee to receive a copy of the decree requiring Colombian migrants to produce a certificate of criminal record. She would also appreciate information from the State party on any proceedings initiated by persons who had been expelled, and on the outcome of such proceedings.

36. **Ms. Aguilar** (Ecuador) said that exit permits were no longer required in Ecuador, and that Ecuadorian nationals and foreigners could freely exercise the right to leave the country. Similarly, Ecuadorians were no longer required to prove that they had completed their military service in order to leave the country. With regard to the legal restrictions in place for minors leaving the country, she said that when a minor was leaving Ecuador accompanied by one parent only, the parent was required to produce written authorization from the other parent for the minor to leave the country. That was not the case when the minor was accompanied by both parents. If the minor was leaving the country accompanied by other family members, they were required to produce written authorization from both parents. Those restrictions were aimed purely at protecting the best interests of the child.

37. **Ms. Ruiz** (Ecuador) said that the Ministry of Justice and Human Rights had a department for human rights and a department for inter-institutional coordination. The human rights department had a unit that dealt with the protection of priority groups, one of which was migrants. Under the national plan to combat trafficking in persons, the department for inter-institutional coordination, in conjunction with the Office of the Attorney-General, worked to protect victims of trafficking in persons, and witnesses in trafficking proceedings. The National Council on Equality of Mobility would be involved in drawing up, implementing and monitoring public policy on migration issues.

38. **Mr. Holguín** (Ecuador) said that Ecuador was in the process of negotiating agreements on the transfer of social security contributions. Such an agreement existed already with Spain; the retirement pensions of Ecuadorian nationals returning to Ecuador after a period spent working in Spain were based on the combined amount of the social security contributions made in Spain and the contributions made in Ecuador. The Ibero-American Social Security Agreement was the reference in that respect.

39. The strategic partnerships that had been referred to did not relate to military or political matters; rather, Ecuador had entered into such partnerships to extend the scope of national plans such as the National Human Development Plan for Migrants. As a result, a national human development plan for migrants had been established for Andean countries, and Ecuador had launched an initiative to create a similar plan for South American countries. Agreements had also been entered into between South American countries regarding matters related to migration such as family reunification.

40. Agreement on regularization issues was difficult to reach when one of the countries concerned was small and one was large. Therefore, small South American countries were working together to establish a common migration policy and common migration space. Those countries would then be in a much stronger position to negotiate future agreements with the United States or Europe. Ecuador was initially focusing its regularization efforts on the nationals of countries of the Southern Common Market and the Andean Community, since “residency agreements” or “permanent migration statutes”, respectively, had been signed with those communities, which contained specific provisions for the regularization of the situation of migrants.

41. **Mr. Tall** welcomed the efforts put into the training of law enforcement officers and judicial staff on the Convention.

42. The mention in paragraph 36 of the State party’s report of the right to social security as the inalienable right of all persons and a paramount duty and responsibility of the State needed some clarification; he would like to know if it covered migrant workers and their families and, if so, in what conditions that right was respected in Ecuador.

43. Noting that the number of children working in the country was substantially higher than the number of children removed from child labour following inspections, he asked what plans the Government had to improve the situation. Given that so few migrant workers were active in trade unions, he would like to know if they were allowed by law to engage in such activities and, if so, to what extent and in what conditions.

44. **Mr. Alba** said that the major principle mentioned in the delegation’s introductory statement, the right to migrate, gave a utopian vision of unlimited mobility within the region and beyond. However, the right generally recognized was that to leave, and return to, one’s own country, rather than another country. What was the State party’s concept of the right to migrate? Was it intending to allow all foreigners who so wished to enter its territory?

45. The planned return programmes sounded positive, as they would help migrants to return home in an orderly fashion. He would appreciate some examples of cooperation and strategic partnerships with host countries. In light of the agreement to allow migrant workers in Latin America, Spain and Portugal to transfer social security benefits between countries, he would also be interested to hear more about the practicalities of such transfers.

46. **Ms. Cubias Medina** asked for clarification on the position of migrants in Ecuador who wanted to regularize their situation outside the context of the programmes mentioned, and what the position would be of a migrant in an irregular situation who was deported but who then returned to join family members who were still in the country.

47. **The Chairperson** asked for further information on child labour and exploitation in conditions resembling servitude, primarily in domestic employment, mines and agriculture; on efforts to end trafficking in children, adolescents and adults; on the numbers of migrants benefiting from voluntary return programmes and the funding they received; and on the situation of women in domestic employment or working in an irregular situation.

48. He noted that the right to leave one’s own country could not always be exercised, for instance if the country of destination required a visa. There could also be problems in respect of the transfer of social benefits, as the contributions made by workers might follow them to their country of origin, but the contributions made by the Government of the host country, to bring pensions up to a minimum level for example, might not.

The meeting rose at 5.50 p.m.