



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

Distr.
GENERAL

CMW/C/SR.61
18 January 2010

ENGLISH
Original: FRENCH

COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT
WORKERS AND MEMBERS OF THEIR FAMILIES

Seventh session

SUMMARY RECORD OF THE 61st MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 27 November 2007, at 10 a.m.

Chairperson: Mr. KARIYAWASAM

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 73 OF THE CONVENTION (*continued*)

Initial report of Ecuador (*continued*)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Editing Unit, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.07-45643 (EXT)

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 73 OF THE CONVENTION (agenda item 3) (*continued*)

Initial report of Ecuador (*continued*) (CMW/C/ECU/1, CMW/C/ECU/Q/1 and Add.1)

1. The CHAIRPERSON invited the Ecuadorian delegation to continue its introduction of the country's report.
2. Mr. SAÁ (Ecuador), speaking as Director-General for Human Rights in the Ministry of Foreign Affairs, said that he would first speak about the standards and policies for protecting vulnerable groups in accordance with the Convention and then address the legitimate concern expressed regarding the mechanism for distinguishing migrants from refugees and, more generally, the issue of refugees in the context of immigration.
3. With respect to the protection and situation of female migrant workers, Ecuador had clear constitutional and legal rules guaranteeing equality of the sexes in employment, including as regarded wages and benefits, and also pursued a whole range of relevant public policies. The National Council for Women undertook activities to ensure that the question of equality between men and women was taken into account in public policy on migration. In addition, the country had committed itself, through its Equal Opportunity Plan 2005-2009, to ending discrimination against women in employment and wage differences between the sexes.
4. The concern expressed at apparent indifference among the population of Sucumbíos to the prostitution of female children and adolescents perhaps resulted from a misunderstanding arising from the translation into English of the written reply in question. Far from accepting or remaining indifferent to that prostitution, the Government strove actively against it. It had adopted a national plan against the trafficking and smuggling of migrants and sexual exploitation of children and adolescents, the aims of which included alerting the public to the devastating consequences of, and preventing those illegal activities. Information campaigns were conducted in all the regions at risk, particularly the province of Sucumbíos, where the National Council for Children and Adolescents worked to increase schoolgirls' awareness both of the existence and the various forms of human trafficking and sexual exploitation and of the ways they could protect themselves.
5. Like many Latin American countries, Ecuador had made sexual tourism an offence and its Criminal Code punished those who provided services for it. In addition, the national plan to which he had referred provided for the implementation of a global strategy to combat sexual tourism which had been drawn up after several months of consultation between the National Council for Women and the National Council for Children and Adolescents. It was also planned to carry out sociocultural studies to obtain information on the behaviour patterns that led men to seek sexual services, particularly from children and adolescents. The results would be used in devising national campaigns to change the behaviours in question. Beginning in 2006 posters had been put up in all the country's ports and airports and in some very popular public places warning potential seekers of sexual services that they risked severe penalties.

6. As to whether there were specialized shelters for victims of human trafficking, Ecuador was studying the ways of protecting such persons throughout the country. There were a number of initiatives by public bodies, local authorities and NGOs to provide shelter for such persons in residential institutions: the city of Quito, for example, had concluded agreements for their accommodation and initial medical and psychological treatment with some NGOs.

7. With regard to the question how the Ecuadorian authorities distinguished migrants from refugees, he said his country had considerable experience of processing refugees. The Refugee Office, which had been established in 2000, had been upgraded in June of the current year to become the Directorate-General for Refugees and that body had, with the support of the Office of the United Nations High Commissioner for Refugees (UNHCR), developed a very rigorous procedure for determining who was entitled to refugee status and for distinguishing such persons from those who did not meet the conditions set in the Convention relating to the Status of Refugees, other international instruments or domestic law. The process began with registration, followed by an interview conducted by qualified professionals trained by UNHCR. A legal opinion was issued following the interview and transmitted to the Eligibility Commission, which studied each application for refugee status in depth and decided whether to accept or reject it. In the event of rejection, the unsuccessful applicant could appeal to the legal department of the Directorate-General for Refugees, which gave a very prompt opinion. The procedure had been applied to the 52,000 applications examined since 2000 and had resulted in the granting of refugee status to 18,000 people, which represented an acceptance rate of approximately 32%. More importantly, the rate of agreement between the Commission's decisions and the opinions of UNHCR had been nearly 98%. UNHCR had no vote in the Commission, but its views were heeded, as were those of the many social organizations that took part in the work and, in many instances, conducted separate interviews with applicants.

8. Preparation of his country's report had been coordinated by the Ministry of Foreign Affairs, which had invited civil society organizations to participate in the three working meetings organized by the Human Rights Coordination Commission. At the first meeting, the civil society representatives had been given the preliminary outline of the report; at the second a draft text had been presented and at the third a much more detailed version had been submitted for the Commission's approval. Organizations which had not been present at those meetings had also been invited to make contributions and comments. The machinery for consultation and coordination with civil society organizations would be strengthened in the future.

9. The Government would take account in drafting its future reports of the comments made concerning references and quotations in its written replies. The reason why there had been many references to the alternative report was that the Government had felt it necessary to clarify a number of points raised in it.

10. Mr. LEÓN (Ecuador), speaking as the representative of the Ministry of Labour and Employment, said that the Government tried to develop coherent migration policies for the efficient management of migration and to ensure that they benefited both migrants and countries of origin and receiving countries. It did its best to devise and apply policies based on international labour standards and the international instruments and multilateral agreements relating to migrant workers. It also followed policies aimed at reducing the vulnerability of certain groups of workers, including workers in an irregular situation, and at promoting equality

between men and women, taking into account the abuses to which female migrants could be subject.

11. Regarding institutions, it continued to use the machinery established by the Permanent Round Table on Migration, in which representatives of civil society participated. He drew attention in that connection to the efforts to promote and publicize the agreement between his country and Peru on regularization and the holding of seminars on migrant workers' rights.

12. With respect to the alleged contradiction between workers' right of association and the exercise of the right to organize, he said that the Constitution and the Labour Code unequivocally guaranteed the trade union freedoms of both Ecuadorian and foreign workers. Some trade unions' rules did, however, impose restrictions, a problem the Government was trying hard to resolve by providing training for trade union officials.

13. Pursuant to article 163 of the Constitution, the provisions of the Convention took precedence over those of domestic law. It was, however, true that paragraph 2 of the written replies was unclearly worded in that regard; it should be understood as meaning that some laws on migration and the status of aliens were not applied in practice because they contravened the Convention and the Constitution.

14. Mr. PABÓN (Ecuador), speaking as national Director of Migration, said in response to questions from members of the Committee concerning statistics that as from 2004 the Government had installed an ultramodern integrated communication system that had enabled the digitization of a great deal of information concerning nationals and aliens entering or leaving the country, including their nationality, civil status, type of visa and country of residence. With that information, very accurate studies could be made of the scale of migration. As his country's borders with Colombia and Peru were very long, it was impossible, despite all the authorities' efforts and the regular checks at entry points, completely to halt illegal entry.

15. His country had no precise information concerning the numbers and nationalities of foreigners living there. Because, under the bilateral agreements signed with Peru and Colombia, citizens of the three countries could move freely between them with just an identity card, it was hard to know how many Peruvians or Colombians were present in Ecuador.

16. The figures for legal border crossings had been computerized and were entirely reliable. In addition, airports and ports had advanced technology for detecting false passports and false identity documents in general. Illegal entry was not, in principle, an offence, but could give rise to expulsion. On the other hand, stateless persons and people who for various reasons, including in particular the absence of agreements with the countries from which they came, could not be expelled were brought before a criminal court, as provided for in article 31 of the Migration Code. In such instances, article 171 of the Migration Code applied; it provided for immediate release following the completion of certain formalities or detention. The duration of detention could not, however, exceed three years, after which time the person could, in exceptional cases, obtain Ecuadorian nationality. The penalty had only been applied once since the law's adoption in 1978. The National Police worked with the relevant foreign consulates and embassies and with NGOs to help immigrants in an irregular situation return to their countries of origin. Immigration offences should not, however, be confused with offences that warranted prosecution

of the perpetrators, whether Ecuadorians or aliens, such as falsification of documents or use of a false identity or false stamps.

17. Persons who entered Ecuador without the necessary papers or by making improper use of a visa were detained not in penal establishments but in Migration Service holding centres. The treatment accorded to migrants in an irregular situation therefore had nothing to do with that given to common criminals. Exit permits constituted a control device applicable to persons legally banned from leaving Ecuador. The use of modern technology had made them unnecessary and the Constitutional Court was expected to rule soon on a request from the President of the Republic that they should be declared unconstitutional. Ecuador was therefore making every effort, and that in a very transparent manner, to ensure that the rights not only of its own citizens but also of all immigrants were guaranteed.

18. Mr. CABRERA (Ecuador), speaking as Under-Secretary for International Migration Policy, said that the National Human Development Plan for Migrants of the National Secretariat for Migrants (SENAMI), which had been developed in accordance with Ecuador's National Development Plan, provided for a series of measures to promote the social and productive investment of Ecuadorian migrants' remittances, including a "migrants' bank", a project to encourage productive initiatives by migrants and their families and a project to support co-development. The measures were based on the principle that emigrants' money remained their property. Emigrants would be encouraged to invest, but would be free to make their own choices. The Committee could be given the details of the programmes in question as soon as they had been approved by the President of the Republic in December of the current year.

19. Ecuador had set up a 10 million dollar fund managed by the Office of the Ombudsman to cover the cost of repatriating vulnerable persons and corpses. In addition, the Government had signed an agreement with the airline company Air Comet for the repatriation of corpses for a token fee of 40 euros. It had also recently transferred to SENAMI a fund for migrants that was intended for use in emergencies or for investment purposes.

20. President Rafael Correa's Government had initiated a plan to facilitate the reinsertion of migrants who decided to return to Ecuador. It was intended above all to encourage family reunification and the return of persons who had either not been regularized in their destination countries or not got what they had expected from migration. A number of administrative hurdles had been abolished for the purpose. Beneficiaries could participate on their return in pilot projects in areas such as tourism, construction and information technology or the creation of micro-businesses. Emphasis had also been placed on projects to facilitate investment. The aim was to attract capital and investment from Ecuadorian returnees and to channel the money into sectors considered to be strategic or in need of strengthening. The projects were consistent with the National Development Plan and with the National Human Development Plan for Migrants which would be submitted in December. To ensure migrants' reinsertion was complete, attention had also been given to fundamental areas such as education, social security and health.

21. Mr. LÓPEZ (Ecuador) said that the Government's implementation of migration policy was based on an extensive process of consultation with migrants themselves. The agreement signed on 13 July 2006 between the Ecuadorian Central Bank and the Spanish bank La Caixa, to which 57 Ecuadorian institutions were parties, concerned the sending of funds between Spain and Ecuador. Under it, over 8,700,000 dollars had been transferred in the space of a year, in a total

of 10,174 operations. The overall amount transferred was continuing to rise. As provided for at the Ibero-American Summit at Montevideo, the Ecuadorian authorities tried to control the operations' hidden costs, including those relating to the exchange rate. Ecuador's efforts in those regards were a world first.

22. To date, 549 people had benefited from the bilateral regularization agreement with Peru, most of them during the last week of its application. The first phase of regularization had concerned only workers in the construction, farming and domestic employment sectors. At the bilateral meeting held in October of the current year coverage under the agreement had been extended to all lawful activities. No Ecuadorian resident in Peru had yet been regularized.

23. The consular identity card system operated in Ecuador. It was applied in the consulates at Murcia and New York, two of the main destinations for Ecuadorian migrants. In keeping with paragraph 93 (03) of the International Civil Aviation Organization rules, the Ecuadorian authorities were currently developing, as part of the programme for strengthening the Under-Secretariat for Consular and Mobile Consular Services, a new card usable in a number of countries.

24. Voting was compulsory in Ecuador but was optional for Ecuadorians living abroad and there were few people on consular electoral rolls. In some countries Ecuadorians did not vote either because, lacking the necessary documents, they were not on the electoral rolls or because polling stations were too far from their place of work or residence. They voted more in European countries, to which migration was recent, than in countries to which it was of longer standing. Campaigns had resulted in 152,000 new voter registrations even though the electoral rolls had only been opened for a limited time. The results of the second phase of the registration drive would be published. Three specific proposals had been made to increase the number of persons registered and therefore of voters. The first concerned the electronic or postal recording of registrations and votes. The second was that electoral rolls should always be open so that Ecuadorians could register at any time. The third was that there should be a permanent register of returning officers for polling stations.

25. In Ecuador, family reunion was automatic. Holders of residence permits with a valid visa had only to produce documentary proof of filiation, marriage or cohabitation and undertake to bear the costs of their family's permanent residence in Ecuador for the family to be able to stay in the country on the same conditions as themselves, namely until the visa expired. In addition, the members of the family were automatically permitted to take up gainful employment. Other than in special circumstances, permit holders' spouses did not lose their status as residents in the event of divorce.

26. His delegation would be very pleased if the Committee could attend the conference on migration and development to be held at Cuenca in April 2008.

27. Mr. COLOMA (Ecuador), speaking as Under-Secretary for Citizens' Security, said it had recently been decided to group all the information systems of institutions providing services for aliens in a Ministry of Foreign Affairs database. In addition, the principal international human rights standards would be included in the country's new regulatory system and the organization acts would be amended accordingly. A number of ministries had instructed the delegation to seek

Geneva-based international organizations' assistance in amending Ecuadorian law on migrants to bring it into line with the international rules.

28. Under the present Constitution, persons who had suffered injury as a result of the exercise of a prerogative of public authorities were entitled to effective reparation. That principle, which was currently limited, would be strengthened in the new Constitution. Furthermore, President Correa's policy was to ensure that everyone living in Ecuador had free access to healthcare and education and the President had pledged that any person or institution acting contrary to that policy would be duly penalized.

29. Ecuador did not yet have a system of indicators whereby measures in favour of migrants could be correlated with their results, but the Committee's recommendations in that respect would be forwarded to the Government for study. His country was convinced that improving migrants' situation also depended on increasing society's concern for them.

30. The CHAIRPERSON said that the Ecuadorian authorities had taken a whole series of institutional measures to help vulnerable migrants, especially women and children, with impressive results. He was, however, concerned by reports that migrants' children were working in the country's banana plantations and had no access to education. In addition, the Committee was concerned that decisions to expel migrants were apparently unappealable.

31. Mr. ALBA welcomed the delegation's very detailed replies, but requested further information concerning the definition of some people as "temporary immigrants". Noting that, according to paragraph 52 of the written replies, "some articles of the Convention that grant fundamental rights do apply to temporary immigrants", he asked the delegation to say whether that meant that other articles of the Convention did not apply to that category of persons and, if so, what justified the exclusion. He also wished to know why provisions of Ecuadorian law that were considered obsolete or contrary to the Convention had not been repealed.

32. Referring to the Committee's requests for information concerning the extent of human trafficking, he expressed surprise that, according to paragraph 164 of the written replies, 152 cases of trafficking had been processed but only four had resulted in convictions. He wished to know why barely 3% of the cases had been decided and what was the status of those which had not been examined.

33. Ms. CUBIAS MEDINA thanked the delegation for its detailed replies. The Ecuadorian authorities had done a great deal to combat trafficking in persons and migrants and should continue their efforts. It was important for the Committee to have statistics concerning the health services available to migrants since it could then verify that the country was protecting and caring for migrants' health effectively. She requested information on migrants' mental health and asked how many trials there had been for violation by police or immigration officers of migrants' human rights.

34. Mr. TAGHIZADE, observing that the Government had recently adopted numerous measures to protect migrants' rights, asked the delegation to say how the authorities ensured those measures were applied on the ground, in the country's districts, regions and remote areas. He also wished to know whether the Social Security Convention had come into force and wondered whether the rule that migrant workers could only transfer the equivalent of 3,000 euros

a month abroad was not contrary to articles 32 and 47 of the Convention, the latter of which provided that States should take appropriate measures to enable migrant workers to transfer their earnings and savings to their State of origin or any other State.

35. Mr. SEVIM expressed concern that in the event of divorce migrants lost all the rights acquired during the marriage and that they could not exercise their rights independently of marriage ties. He wished to know whether migrant workers could hold senior positions in trade unions because, according to paragraph 155 of the written replies, trade union statutes stipulated that executives must be Ecuadorian by birth.

36. Mr. EI-BORAI said that, even if some provisions of Ecuadorian law were obsolete or contravened the Convention, the Committee could not ask the State to amend its legislation because the Convention took precedence over domestic law. What had to be changed was the practice of those who applied domestic law. In many countries the judicial and administrative authorities often confined themselves to the rules of that law. Even if a lawyer invoked an international instrument, the judge would probably not take up the suggestion. The need, therefore, was to make officials aware of the obligations that derived from the international obligations their country had ratified.

37. The delegation had not responded concerning freedom of association and the holding of senior positions in trade unions. Information on those topics would be welcome, especially as Ecuador had ratified International Labour Organization Convention No. 87.

38. Mr. BRILLANTES asked with respect to employment abroad whether there were, independently of the agreement with Spain, private agencies authorized by the Government to manage supply and demand.

39. Ms. DIEGUEZ said it was discriminatory that Colombian men married to Ecuadorian women had to prove two years' residence to obtain Ecuadorian nationality, whereas Colombian women married to Ecuadorian men could apply for it immediately through a shortened procedure. She wondered whether the reason for the difference was that many Colombian men married Ecuadorian women to obtain Ecuadorian nationality.

40. The CHAIRPERSON suggested a short break to enable the delegation to prepare its replies.

The meeting was suspended at 12.26 p.m. and resumed at 12.35 p.m.

41. Mr SAA (Ecuador) said that access to education was a universal right of which no child could be deprived. He could not speak about the situation regarding migrant children, but he could assure the Committee that refugee children could all attend school, even at the stage of an application for asylum. In practice, it could happen that a head teacher in a remote rural area refused to enrol a child, but the Ministry of Education and its regional offices were ready to intervene immediately in such cases.

42. The requirement that Colombian migrants produce a certificate of criminal record had not been imposed by the Ecuadorian Government but stemmed from negotiations with its Colombian counterpart. It also represented a response to a call from Ecuadorian society, which had been alarmed for over a decade at the link between a rise in delinquency and the presence of

Colombian gangs. In fact, a not inconsiderable proportion of detainees were of Colombian origin. In 2002, there had even been strong pressure to require Colombians to have visas, a development which had caused a real political problem because the Government could not ignore demands from the public. The advisability of introducing such a requirement was periodically re-examined. In the case of asylum seekers, the authorities were flexible and did not always production of a certificate of criminal record.

43. While it might seem surprising by international standards that there had only been four convictions in the 152 cases of human trafficking processed by the Office of the Attorney-General, for Ecuador that small number represented a triumph. It should not be forgotten that acts connected with human trafficking had only been criminalized in 2005 and that the Ecuadorian judicial system was very slow. There would be other convictions because the Office of the Attorney-General had a very competent specialized team that was determined to pursue a very strict policy in that regard.

44. Mr. El-Borai had rightly said that the judicial and administrative authorities applied domestic law in preference to international instruments. That problem also arose for instruments other than the Convention, because there was a culture of the sovereignty of Ecuadorian laws. Judges were not well enough informed and must therefore be given further training.

45. Mr. LEÓN (Ecuador) explained that, whereas "immigrants" were residents, "temporary immigrants" had only a temporary residence permit. Immigrants were entitled to all the benefits provided for by Ecuadorian law and could even apply for naturalization. They were also entitled to work without having a work permit. Temporary immigrants comprised mainly diplomats, students, highly skilled professionals on secondment, missionaries and voluntary workers. A certificate of employment was the first document required in order to obtain a visa.

46. Freedom of association was a right recognized by the Constitution and the Labour Code. In Ecuador, aliens had, within the limits provided for by law, the same rights as nationals; in the case of freedom of association, there was no limit and everyone was fully guaranteed the exercise of the right. While some trade unions required their members to have Ecuadorian nationality, the problem was gradually being resolved by means of appropriate training.

47. The children working in banana plantations were recruited through subcontracting agencies. A law adopted in 2002 banned such agencies from employing minors. The Ministry of Labour was aware of the seriousness of the problem and give it special attention. It had set up a team of 30 mobile inspectors and collaborated with the Ministry of Education in returning the children to school. The Ecuadorian Centre for Vocational Training, CECAP, was active in alerting parents to the problem.

48. The Ministry of Labour's Directorate of Employment and Human Resources was the only body empowered to license recruitment agencies. The agencies merely centralized supply and national or sometimes international demand. Placement of workers abroad was a matter for the Ministry of Foreign Affairs. There had been several cases of abuse and fraud in connection with recruitment for private security firms.

49. Export of social security benefits was possible when there was a relevant bilateral agreement. An example was the agreement concluded with Spain in 1960, which guaranteed continuity of acquired benefits for everyone who contributed successively in the two countries.

50. Mr. PABÓN (Ecuador) said that all reprehensible acts by police officers were punished as disciplinary or criminal offences, depending on their seriousness, and were noted in the offender's service record. The detention of migrants who could not be expelled could take the form of house arrest. That option had, however, never been used as it entailed the mounting of a police guard. An alternative was for a court to order a migrant to appear before it at regular intervals.

51. It should be noted that the police kept very full records of all types of judicial decisions, whether they concerned the issuing of arrest warrants, house arrest or the payment of alimony. The police was therefore truly able to prevent anyone who had broken the law from leaving the country.

52. Mr. LÓPEZ (Ecuador) said regarding child workers that the Ecuadorian and Peruvian governments strove to promote the concept of social responsibility among businesses, which were required to respect national and international employment standards. With respect to social security benefits, even if there was necessarily a delay between the adoption and the application of decisions reached in the framework of the Ibero-American Summit, the agreements concluded with Spain and the Andean countries guaranteed workers their due. Expulsion decisions applicable in remote regions had been abolished, as had the fine for illegal entry to Ecuador. Foreigners who divorced did not lose their right of residence; however, their Ecuadorian spouse was no longer obliged to provide for their upkeep and they therefore had to apply for a change of status.. At all events, it would be for the future Constituent Assembly to determine the measures to be taken in any given field to ensure that Ecuador met its international obligations.

53. Mr. COLOMA (Ecuador) said that, while the Government agreed with the recommendation concerning collection of information on migrants' health, care must be taken to respect their right to privacy. Some 30 training courses had already been held for officials responsible for matters concerning aliens and such efforts would continue, particularly with respect to members of the judiciary. Ecuador would seek technical assistance from the international community for the purpose. As Mr. López had indicated, the Constituent Assembly had not started work and it would therefore be a year before Ecuador could report on the measures taken to promote human rights. With respect to the threatening of migrants and their reluctance to file complaints in that event, a special team had been set up within the Office of the Attorney-General to prosecute all the offences.

54. Mr. MONTALVO (Ecuador) said that the Ecuadorian Mission endeavoured to follow the Committee's work closely on the Government's behalf and participated in numerous forums with a view to encouraging incorporation of a human rights dimension in migration issues and promoting the Convention. The dialogue with the Committee would be very helpful to Ecuador in preparing for the universal periodic review.

55. The CHAIRPERSON thanked the delegation for the fruitful exchange with it. Ecuador was a good example in a number of respects and was unquestionably a leader with respect to migration. It did, however, still have improvements to make. The Committee would therefore

include in its concluding observations a number of recommendations aimed at helping the country to implement the Convention more fully.

The meeting rose at 1.10 p.m.
