



**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 141st meeting

Held at the Palais Wilson, Geneva, on Wednesday, 24 November 2010, at 10 a.m.

Chairperson: Mr. El Jamri

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 73 of the Convention (continued)

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

1. **The Chairperson** invited the delegation of Ecuador to take places at the Committee table and continue their replies to the questions raised at the previous meeting.
2. **Mr. Montalvo** (Ecuador) said that the delegation had divided up the remaining questions according to theme.
3. **Mr. Holguín** (Ecuador) said that the question concerning the right to migration was a fundamental matter that had to do with relations between States and could be the topic of a substantive discussion. Article 40 of the new Ecuadorian Constitution recognized the right to migration and guaranteed the enjoyment of their rights by Ecuadorians living abroad. However, although the Ecuadorian State could establish the rights of its nationals and of non-nationals in Ecuador, it still had to take the migration policies of other States into account as its jurisdiction ended where that of others began. Nevertheless, the type of nation-State of the nineteenth and twentieth centuries with its rigid boundaries no longer existed; in the modern world the State, which of course remained sovereign, had to assume its responsibilities and abide by the principles of international solidarity.
4. **Ms. Ruiz** (Ecuador) said that at the end of November, Ecuador would be conducting its sixth housing census and the seventh population census, which would include a number of questions relating to migration and would give an up-to-date overview of the situation of migration. Meanwhile, the relevant departments were working to synchronize the computer systems of the Ministry of Foreign Affairs and the Ministry of Interior. An online system was being created, made up of several modules with different access parameters. The system would consist of a complete and updated database which, while ensuring the confidentiality of the data it contained, would make information on migration flows, based on visas issued and entry and exit records at border points, available to the police for the compilation of statistics.
5. The census should also enable the Ecuadorian Government to obtain the most accurate figures possible on child labour. The Government was making considerable efforts to eliminate child labour and, since the advent of the “citizens’ revolution”, had launched large-scale programmes to promote school enrolment and the continued schooling of children and adolescents. Education was provided free of charge and benefits were available to particularly needy families, provided that their children were enrolled in schools.
6. **Mr. Holguín** (Ecuador) said that, unlike some large countries such as the United States of America, where undocumented migrants were obliged to cheat in order to survive, Ecuador placed citizenship above nationality and therefore sought to regularize all migrants in an irregular situation within its territory, in an orderly manner. Thus Ecuador had just concluded an agreement with Peru whereby the situation of Peruvians living in Ecuador and Ecuadorians living in Peru could be regularized within 180 days. A similar agreement with Colombia, whose nationals constituted the greatest proportion of undocumented migrants in Ecuador, was currently at an advanced stage of negotiation. When both agreements were implemented, the situation of 95 to 98 per cent of undocumented migrants living in Ecuador would have been regularized. True to its principles, Ecuador would take the necessary steps to ensure that the remaining 2 per cent not affected by those agreements received the documents that they needed in order to exercise citizenship in the country.

7. The human mobility bill was ready. It elaborated all the constitutional provisions on human mobility, which covered all the areas addressed by the Convention as well as other areas, such as the family and vulnerable groups. Breaking away from the legislation inherited from dictatorships that still remained in force, the bill drew on Argentine and Uruguayan rights-based models while retaining features that were specific to the Andean countries. The bill was currently before the Ministry of Foreign Affairs, the Ministry of the Interior and the Ministry of Labour, in addition to the National Secretariat for Migrants, for consideration; it would shortly be put before civil society, which took a very active part in discussions, and would then be amended on the basis of the observations made, before being finally submitted to the National Assembly.

8. **Mr. Montalvo** (Ecuador) read out article 424 of the Constitution, which expressly provided that duly ratified international human rights instruments that enshrined higher standards than those set out in the Constitution had precedence over “any other” domestic law. Article 425 spelled out the hierarchy of norms and stipulated that in the event of a conflict, the competent authorities must apply the higher norm. Lastly, according to article 426, the rights enshrined in the Constitution and in international human rights instruments were directly and immediately applicable, without the need for subsidiary legislation.

9. While the implementation of certain international rules raised problems that required new standards and procedures, the adoption of the new Ecuadorian Constitution had brought with it a profound structural and legislative reform, which meant that some 200 laws and legislative instruments were currently awaiting approval. Even though the process was lengthy, it demonstrated the political will of the Ecuadorian Government and civil society to adapt to the provisions and principles of the Convention and other international instruments.

10. It should also be noted that, even though those principles were enshrined in the Constitution and were directly and immediately applicable, they were new and had not necessarily yet been taken in by the judiciary. Again, that was a process that was under way. It was important to note that the Ecuadorian Constitution rested on principles and guarantees and placed international treaties at the top of the legal hierarchy.

11. **Ms. Aguilar** (Ecuador) said that social security was a non-derogable right governed by a number of principles, including solidarity, universality, fairness, effectiveness, transparency and participation. The system was currently being developed and once its financial viability had been ensured it would aim to offer universal coverage to everyone living in Ecuador, without discrimination. All national and foreign workers who contributed to the social security system were entitled to benefits, and their children’s health costs were covered up to the age of 18 years. Workers’ spouses should also eventually be covered by the system. Moreover, all social security benefits paid by a host country, in particular retirement pensions, were transferable when Ecuadorian migrant workers who had contributed to that country’s social security scheme returned to Ecuador.

12. **Ms. Ruiz** (Ecuador), referring to trafficking in persons, said that the Ministry of the Interior had drawn up a deportation protocol that would put an end to the deportation of the victims of trafficking, while steps would be taken to protect their rights and to prosecute the perpetrators involved. The inter-institutional committee in charge of the national action plan to combat trafficking was kept informed of all proceedings initiated. Allegations concerning the trafficking of migrants were investigated by the Office of the Public Prosecutor and victims were given protection, if needed. Victims of trafficking could appeal against deportation orders and could obtain redress, where applicable. The Criminal Code provided for penalties of 6 to 12 years’ imprisonment for trafficking and up to 16 years’ imprisonment in the event of aggravating circumstances, and those sentences could not be reduced. However, judgements were often delayed due to a shortage of public prosecutors and judges, a situation that the Government was seeking to address.

13. Persons awaiting deportation were held in a temporary reception facility, which was not a place of detention, nor of deprivation of liberty, and where no provisions had yet been made for the separation of men and women. Adequate financial resources had been allocated in order to prevent arbitrary decisions and to improve the efficiency of the deportation process without harming the rights of individuals. The Ministry of the Interior's protocol penalized any abuse committed during the process and thus guaranteed the right of the accused to a fair trial.

14. In June 2010, identity checks had been carried out across the country and had led to a number of deportations. Nine provincial governors had been suspended from duty as a result of irregularities observed during detentions, and the National Police had been instructed to investigate so as to ensure that no human rights violations went unpunished.

15. **Ms. Aguilar** (Ecuador) said that the elimination of child labour was a priority for Ecuador, which had created a new human development programme and brought some existing programmes up to date, including the programme known as *Ecuador sin trabajo infantil* (Ecuador without child labour), which was aimed at protecting children from all forms of exploitation. Inspections were carried out in workplaces to prevent the recruitment of children and so guarantee their right to education. Work was prohibited for children under 15 years of age and authorized for the others under strict conditions – their working hours and days were regulated; they had to be registered with the social security system; their contracts had to be verified and approved by the Ministry of Labour; they could work only in specific areas and their rights must be respected. One of Ecuador's goals was to eliminate child labour in rural areas and, to date, the rights of 2,500 children had been restored. It was also seeking to eliminate child labour in mines and banana plantations. Between 2009 and 2010, as a result of action taken by the Ministry of Labour, 1,000 children had been prevented from working in mines and 500 children from working in banana plantations. Moreover, domestic work was prohibited for all children under 18 years of age.

16. With regard to the registration of children, civil registry offices were in the process of being reformed and measures were being taken to strengthen institutional capacities so that all communities were registered, including border communities. In addition, a census was planned in order to determine how many children had not been registered and to take steps if necessary.

17. **Mr. Thullen** (Ecuador) said that Ecuador was working closely with the International Labour Organization (ILO), in the framework of the International Programme on the Elimination of Child Labour (IPEC), with a view to establishing south-south technical cooperation in that area, especially with Brazil. Agreements had been signed to prevent the recruitment of children by the flower industry.

18. **Mr. Holguín** (Ecuador) explained that the considerable flow of Colombian migrants had led the Ecuadorian Government, in cooperation with the Directorate-General for Refugees and the Office of the United Nations High Commissioner for Refugees (UNHCR), to establish an expanded registration procedure in all provinces, in particular those bordering Colombia. That procedure had allowed UNHCR and Ministry of Foreign Affairs staff to determine the number of asylum-seekers and to improve and expedite the asylum application review procedure. Some 53,000 Colombians had obtained refugee status in Ecuador, which had become the country hosting the largest number of asylum-seekers in South America.

19. The right of Ecuadorians living abroad to vote was guaranteed by the Constitution. They could take part in presidential and vice-presidential elections and elect 6 of the 126 members of the National Assembly. Moreover, a mechanism had been established that would allow them to call for a referendum on issues of concern to them. Foreigners living

in Ecuador also enjoyed the right to vote, provided that they had resided there for at least five years.

20. With regard to the repatriation of Ecuadorians, the title of the *Bienvenidos a casa* (Welcome Home) programme has been altered to avoid any confusion with the European directive on repatriation and the return programmes of some European countries, where “voluntary returns” were often subject to pressure. The programme ensured that Ecuadorians returned willingly, in a dignified and well-planned manner. The Government was aware that such returns were advantageous to the country and assisted those who wished to return with all of their property from abroad. In the same vein, the Cucayo programme supported the continued professional development of returning Ecuadorians by granting them financial assistance. It should be noted that Colombia had also launched a return programme of its own, in collaboration with Ecuador, to ensure that Colombian nationals who wished to do so could return to their country. Although the Ecuadorian programme had been introduced only recently, to date it had enabled 11,290 Ecuadorians to return home.

21. **Mr. Montalvo** (Ecuador) drew the Committee’s attention to the fact that according to the UNHCR report, Ecuador was a model of good practice in South America in respect of refugees.

22. **Mr. Sanchez** (Ecuador) said that, according to the Constitution, migrant workers awaiting deportation could challenge the decision to deport them. Under article 215 of the Constitution, the Ombudsman must safeguard the rights of all persons living in Ecuador, including migrants. With regard to the political rights of foreigners living in Ecuador, some 220 laws had been submitted to Parliament and should be gradually implemented. For example, the Public Services Act recognized the right of foreigners living in Ecuador to become public officials, provided that they had lived in Ecuador for at least five years. With regard to purchasing property, foreigners enjoyed the same rights as Ecuadorians with two exceptions, provided for in the Constitution: they could not purchase property in protected areas — such as nature reserves — or in so-called national security zones along the borders.

23. Article 326 of the Constitution guaranteed foreign workers the right and freedom of association without prior authorization and article 9 provided that foreigners living in Ecuador had the same rights and duties as Ecuadorian citizens.

24. In response to the question raised by Mr. El Jamri, he said that on 16 March 2010 the Ministry of Labour Relations, which dealt with domestic workers, had launched the “Decent domestic work” programme with a view to eliminating labour exploitation and strengthening mechanisms for monitoring and raising awareness of that issue. The programme, based on the decent work principles set out by ILO, provided for an increase in the minimum wage of more than 300 per cent, gratuities, overtime pay, paid leave and social security coverage, for Ecuadorians and foreigners alike. The number of home inspections would also be increased in order to monitor compliance with the Labour Code and to allow hiring on hourly contracts. It would also encourage the establishment of capacity-building programmes and others to raise awareness among domestic workers of their rights and obligations. The programme aimed to increase the proportion of domestic workers registered with the Ecuadorian Social Security Institute, which currently amounted to approximately 25 per cent.

25. **Mr. Thullen** (Ecuador) said that the issue of decent work for domestic workers had been on the agenda of the International Labour Conference (ILC) for June 2010. A consensus had appeared to emerge in favour of the adoption of a convention, rather than a mere recommendation, at the forthcoming ILC in June 2011, in accordance with the firm wishes of Ecuador and other Latin American countries. He introduced a leaflet prepared by the Ministry of Labour Relations, setting out the rights of domestic workers and defining

the nature of domestic work, employment contracts, remuneration, the working day and even membership of the Ecuadorian Social Security Institute, among others.

26. **Mr. Montalvo** (Ecuador), recalling the Committee's recommendation concerning the declarations provided for under articles 76 and 77 of the Convention, reiterated the importance of that procedure for Ecuador and said that it was included among the new laws currently under consideration by the National Assembly. While he welcomed the Committee's recommendations, which lent greater weight to the legislative reforms, he drew attention to the fact that in Ecuador, complaints were lodged with the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights rather than with the treaty bodies. Ecuador had extended a standing invitation to all special procedures mandate holders, thereby demonstrating its openness and desire for transparency. In response to the question raised by Ms. Poussi Konsimbo in respect of paragraph 109 of the report, he said that although the National Commission for the Protection of Migrants would cease to exist, its functions would be taken over by the Office of the Ombudsman.

27. **Mr. Holguín** (Ecuador), replying to the questions of Committee members, said that the National Secretariat for Migrants, which had been created in 2007, was responsible for the protection of Ecuadorians abroad and of foreigners, for migration policies and for the management of the "Casas Ecuatorianas" (Ecuadorian homes). The Casas were located in the large towns of the main countries in which Ecuadorians lived so that they would not lose contact with their home country. With regard to the events in the state of Tamaulipas in Mexico, he recalled that the two survivors of the massacre of 72 migrants perpetrated by Los Zetas were protected under the witness protection programme and that the Government could not, therefore, comment on the matter. However, he could say that representatives of Ecuador and Mexico had met and that it had been possible to repatriate two Ecuadorian women thanks to identification of the bodies.

28. Reading out article 416 (6) of the Constitution, he said that the advocacy of universal citizenship applied to Ecuador, but could also inspire other countries. With regard to paragraph 37 of the report, he noted that migrants, whether in a regular or an irregular situation, were equal before the law and that there was a mechanism for regularizing anyone on request, regardless of whether they had entered Ecuador legally or illegally.

29. In conclusion, he said that refugees were protected under the 1951 Convention, the Cartagena Declaration on Refugees, the Declaration of Mexico and the Cartagena Agreement, and that by strategic alliance was meant the alliance that certain South American countries (Bolivia, Ecuador, Peru, Colombia, Argentina and Chile) could enter into in order to negotiate agreements on migration flows with Europe and the United States.

30. **Ms. Ruiz** (Ecuador), referring to the National Human Development Plan for Migrants, to Ecuador's comprehensive migration policies and to the need to mainstream migration-related issues in all State activities, said that migrants and their families should also be looked after and their dynamism put to good use. The National Secretariat for Migrants had established a number of programmes, including assistance for returns, financial development and the drafting of new legislation designed to align the standards in force with the new Constitution. All victims whose rights had been violated were entitled to compensation. The National Secretariat for Migrants had published and distributed the text of the Convention to officials and a manual on human rights had been issued to the 40,000 national police officers, including those at border posts, emphasizing the right to mobility, non-discrimination and protection.

31. **Mr. Holguín** (Ecuador) thanked the Committee members warmly for the dialogue and re-emphasized the importance that Ecuador attributed to the Committee's observations, as the country was aware that much still remained to be done, in particular with regard to the development of subsidiary norms that complied with the new Constitution.

32. **Ms. Cubías Medina** (Ecuador), recalling some of the observations made by the Committee when it had considered Ecuador's initial report, in particular regarding the declarations provided for in articles 76 and 77 of the Convention and Ecuador's accession to ILO Convention No. 143, said that she welcomed the fact that the possibility of making those declarations was under consideration as part of the legislative reforms and that accession to the Convention was also envisaged. She recalled that the Committee had recommended that Ecuador should intensify its efforts to tackle the problem of the commercial sexual exploitation of migrant children, especially in the Lago Agrio region, and had asked for further information in that regard. In addition, she recalled that detention centres must offer access to basic social services and asked how long men and women could be accommodated there together. While welcoming the Government's efforts to combat child labour, she asked whether the data on child and adolescent labour were disaggregated by nationality. With regard to deportations, she wished to know whether the new laws would provide for a clear and rapid procedure which would comply with the new Constitution and the Convention while safeguarding the right to due process of law. She also expressed concern with regard to the situation of Cubans, who could not be repatriated if they had been absent from Cuban soil for more than 11 months and 30 days. She welcomed the regularization procedure that had been established but would like to know how those who entered Ecuador illegally for a second time, and so committed an offence under Ecuadorian law but not under the Convention, were dealt with. Lastly, she noted that in some countries, the Convention was applied to foreigners rather than domestic law and wished to know whether that was also the case in Ecuador.

33. **Mr. Brillantes** said he regretted that one of the members of the Ecuadorian delegation had spoken of exports in connection with migrant workers and domestic workers; that manner of thinking ran totally counter to the spirit and letter of the Convention, which sought to protect those persons and to preserve their full dignity. He recommended avoiding the use of the word "export" in connection with emigrants. At the same time, he wished to know whether the State party supported its nationals who had gone to work in countries with which it had not signed the relevant bilateral agreements (such as Afghanistan, the Democratic People's Republic of Korea, Iran, Iraq, or Somalia), where the situation was known to be such that it would be practically impossible to protect them or to defend their rights. He asked whether the Ecuadorian authorities had introduced procedures to prevent such persons from going ahead with their plans, at the risk of infringing their right to freedom of movement in order to comply with their obligation to protect them.

34. **Mr. El-Borai** said he was aware that Ecuador was in a transition period in legal terms after adopting a new constitution that coexisted alongside outdated laws. While it always took time to adapt legislation in such circumstances, it was clear that in the hierarchy of laws, the Constitution took first precedence, followed by duly ratified international conventions and then organizational laws. However, judges and officials, who had not yet received training in the new Constitution, invariably gave preference to domestic law, with which they were familiar, which obliged their compatriots to resort to the Constitutional Court in order to assert their rights under the Constitution. It was very difficult for migrants to take that course of action. It was, therefore, essential for the Government to do all in its power to provide training to the judiciary on the new laws in force as soon as possible.

35. **The Chairperson**, speaking as a member of the Committee, asked whether Ecuadorian migrant workers had been involved in the preparation of plans and programmes for their voluntary return and reintegration.

36. **Mr. Montalvo** (Ecuador) apologized on behalf of the delegation for the unfortunate and unintentional use of the term "export" in connection with migrant workers; he was

sorry for the slip and assured the Committee that Ecuador fully supported its efforts to protect the rights of migrant workers.

The meeting was suspended at 12.10 p.m. and resumed at 12.40 p.m.

37. **Mr. Holguín** (Ecuador) said that Ecuador respected the right of everyone to migrate and considered that migration must continue to be an opportunity, rather than becoming a problem, which meant that anyone wishing to migrate must plan ahead; at the same time, it was incumbent upon the authorities to provide prospective migrants with all the information that they required, including with regard to the difficulties that they could encounter when they arrived in countries where it could be difficult to protect them, such as those that Mr. Brillantes had mentioned. In the current context of Latin American integration, Ecuador was signing an increasing number of consular protection agreements with other countries. The last such agreement — which was an example of good practice to be followed — was the one signed with Colombia and Peru, which provided that the Ecuadorian consulate in Tapachula, in the south of Mexico close to the border with Guatemala, was also mandated to defend the rights of Colombian and Peruvian nationals who entered Mexico and to inform the authorities in their respective countries if they were detained by the immigration authorities or the police. As Ms. Cubías Medina had mentioned, the Sucombios region on the Colombian border was a place where numerous forms of trafficking took place (including narcotics, weapons, prostitution and trafficking in persons), where there were migrants in irregular situations and where ununiformed illegal Colombian forces passed through. The resulting climate of danger there made it difficult to monitor the situation with regard to trafficking in children for sexual exploitation. Nevertheless, the country had an inter-institutional protocol for the protection of children and adolescents, under which each institution contributed according to its competence, for example in order to recover children being held by one of the parents or, more importantly, to combat trafficking in children.

38. With regard to the situation of Cubans, he had met the Cuban Deputy Minister for Foreign Affairs, who had explained to him that Cubans were not actually prevented from returning to Cuba after 11 months and 30 days but that beyond that limit, they forfeited certain advantages (such as housing) or benefits. Cuban immigrants, who were aware of those rules, therefore often travelled back and forth between Cuba and Ecuador (four or five times per year), sometimes in order to resell in Cuba clothing that they had bought more cheaply in Ecuador. The regularization procedure for migrants in irregular situations primarily concerned Peruvians and Colombians (98 per cent), because of the agreements that had been signed with their countries, followed by other nationalities.

39. **Ms. Ruiz** (Ecuador) said that her country had instituted a policy of comprehensive care with regard to the trafficking and sexual exploitation of children, which included children in the Lago Agrio region and provided a framework for internal and external police operations on the northern border. The Ministry of Public Health guaranteed access to social services and hygiene in provisional detention facilities and the food provided was approved by the National Secretariat for Migrants. As detention in those centres was by definition temporary, separate accommodation for men and women was not available, although there were, of course, separate areas within those establishments.

40. **Mr. Montalvo** (Ecuador) said that Ecuador would be able to provide further information on the declarations provided for in articles 76 and 77 of the Convention and on accession to ILO Convention No. 143 in its next periodic report. He recognized the gap that existed in Ecuador between legal reality and the training given to law enforcement officials and said that he had the impression that international treaties were already applied in administrative practice and jurisprudence, although he could not cite actual cases. He recalled that under article 427 of the Ecuadorian Constitution, the provisions of

international human rights treaties were directly applicable, even if the parties did not expressly invoke them.

41. **Ms. Cubías Medina** said that she welcomed Ecuador's efforts to improve the living conditions of migrant workers and their families, in particular with regard to the institutional and legal reforms currently under way, which tended to make external and internal migration policies more coherent. Nevertheless, the State party would still need to improve reception and accommodation facilities in detention centres considerably and to separate male detainees from women and children. As a host country, Ecuador should endeavour to be consistent with the provisions of the Convention; the Committee could make recommendations in that respect in its concluding observations, based on specific examples.

42. **The Chairperson** welcomed the high quality of the frank and constructive dialogue with the high-level delegation sent by Ecuador and congratulated the State party on the progress it had made on numerous fronts since it had submitted its initial report. He encouraged it to continue its efforts, including dialogue with neighbouring States, and to establish the provisions of the Convention — as Ecuador anticipated doing — as the minimum standard acceptable.

43. **Mr. Holguín** (Ecuador) thanked the Committee for the warm welcome that it had extended to the delegation and its report and said that he was certain that in its next report Ecuador would be able to cite progress on many other fronts.

The meeting rose at 1.05 p.m.