

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

Seventh session

Geneva, 26 – 30 November 2007

ADVANCE UNEDITED VERSION

Concluding Observations

Ecuador

1. The Committee considered the initial report of Ecuador (CMW/C/ECU/1) at its 60th and 61st meetings (see CMW/C/SR.60 and SR.61), held on 26 and 27 November 2007, and adopted the following concluding observations at its 67th meeting, held on 30 November 2007.

A. Introduction

2. The Committee welcomes the submission of the initial report of the State party as well as the replies to the list of issues and the additional written information provided by the delegation which enabled the Committee to gain a clearer idea on the implementation of the Convention in the State party. The Committee also welcomes the constructive and fruitful dialogue with a competent high-level delegation.

3. The Committee recognizes that Ecuador is known as a country of origin of migrant workers, with however significant and increasing numbers of migrant workers staying in its territory, in particular Colombian and Peruvian, or in transit.

4. The Committee notes that some of the countries in which Ecuadorian migrant workers are employed are not yet parties to the Convention, which may constitute an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

B. Positive aspects

5. The Committee welcomes the efforts by the State party to promote and protect the rights of Ecuadorian migrant workers abroad, including measures taken to facilitate their participation in national electoral processes. It also welcomes the adoption of bilateral agreements with both countries of employment of Ecuadorian migrant workers, such as Spain, and countries of origin of migrant workers travelling to Ecuador, such as Peru and Colombia.

6. The Committee further welcomes:

- a) that the National Secretariat for Migrants (SENAMI), mandated to develop and implement Ecuador's migration policies, has been elevated to ministerial level in 2007;
- b) the establishment, in September 2005, of the Round Table on Labour Migration, an inter-institutional framework which includes civil society organizations and specialized international organizations, with the aim of assisting in the formulation of public policies on migration, with a rights-based approach;
- c) the implementation of migration regularization programmes by the State party with the aim of documenting irregular migrants, notwithstanding some shortcomings in their reach and results.
- d) the information that civil society organizations were involved in the preparation of the State party's initial report;
- e) the State party's participation at the international level in efforts to promote the ratification of the Convention;
- f) the creation of an information system on migration.

7. The Committee also welcomes the ratification of the following instruments:

- a) The optional protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict, ratified on 30 January 2004 and 7 June 2004 respectively;
- b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants By Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, ratified on 17 September 2002;
- c) International Labour Organization (ILO) Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, of 1999, ratified on 19 September 2000;

C. Main subjects of concern, suggestions and recommendations

1. General measures of implementation (arts. 73 and 84)

Legislation and application

8. The Committee notes with appreciation that international treaties ratified or acceded to by the State party, including this Convention, have very high rank in the State party's normative system, second only to the Constitution. Nonetheless, the Committee is concerned that a number of provisions in the national legislation, although considered obsolete, are at variance with the provisions of the Convention. This is a concern also because officials working in the administration of justice, including lawyers, judges and prosecutors, make little use of the Convention and rather rely on national norms.

9. **The Committee recommends that the State party fully harmonize its legislation with the Convention in order to give appropriate implementation to its provisions. The State**

party is also encouraged to develop awareness-raising programs for judicial officials on the importance of being aware and making use of human rights treaties, including this Convention.

10. The Committee notes that Ecuador has not yet made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive communications from States parties and individuals.

11. The Committee encourages the State party to consider making the declarations provided for in articles 76 and 77 of the Convention.

12. The Committee notes that while Ecuador has ratified on 5 April 1978 the ILO Migration for Employment Convention, 1949 (No. 97) it has still not acceded to the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

13. The Committee invites the State party to consider acceding to ILO Convention No. 143 as soon as possible.

Data collection

14. The Committee recalls that information on migration, including immigration and transit, is indispensable to an understanding of the situation of migrant workers in the State party and to an assessment of the implementation of the Convention.

15. The Committee encourages the State party to pursue its efforts to create a sound database in line with all aspects of the Convention, including systematic data – as disaggregated as possible - concerning migrant workers in transit or in Ecuador. When precise information is not possible, for instance with respect to migrant workers in irregular situation, the Committee would appreciate receiving data based on studies or estimated assessments.

Training in and dissemination of the Convention

16. The Committee notes that - in the context of Ecuador's National Plan for Human Rights – training activities for civil society organizations and relevant public officials on the Convention and its promotion have been introduced. It is also appreciated that national police has introduced as mandatory the subject of human rights of migrants in all course for police officers.

17. The Committee recommends that the State party continue and expand systematic education and training to all officials working in the area of migration or in contacts with migrant workers and members of their families, including at the local level.

18. The Committee also recommends that the State party make the provisions of the Convention widely known to both Ecuadorian migrant workers abroad and foreign migrant workers residing or in transit in Ecuador, as well as to communities as a whole, through, inter alia, long-term awareness-raising campaigns.

2. General principles (arts. 7 and 83)

Non-discrimination

19. The Committee is concerned at the information that migrant workers and members of their families may suffer from discriminatory attitudes and social stigmatization. Furthermore, while taking note the State party's explanation in this respect, the Committee is concerned that the practice of asking for the certificate of criminal record (*pasado judicial*) exclusively to Colombian migrants, may contribute to their stigmatization and stereotyping.

20. **The Committee encourages that the State party:**

a) **Intensify its efforts to ensure that all migrant workers and members of their families within its territory or subject to its jurisdiction enjoy the rights provided for in the Convention without any discrimination, in conformity with article 7;**

b) **Strengthen its awareness-raising efforts by promoting information campaigns for public officials working in the main areas of immigration, including at the local level, and for the general public on the elimination of discrimination against migrants, and combat their social marginalization and stigmatization, including via the media;**

c) **Given the potentially adverse impact of the practice of asking for the certificate of criminal record (*pasado judicial*) as entry requirement applicable to exclusively Colombian migrants, consider reviewing this policy.**

3. **Human rights of all migrant workers and members of their families** (arts. 8-35)

21. The Committee notes that, according to article 37 (d) of the Migration Law, Ecuadorians wishing to leave the country need an "exit permit" released by the Migration Service of the National Police even if the country of destination does not require any visa for Ecuadorian citizens. In this respect, the Committee welcomes the information provided by the delegation that the Constitutional Court is currently assessing the constitutionality of this provision.

22. **The Committee recommends that the State party eliminate the requirement of the "exit permit" for nationals wishing to leave Ecuador, in accordance with article 8 of the Convention.**

23. The Committee notes that the State party seeks to ensure that migrant workers and members of their families detained for violation of provisions relating to migration are held separately from convicted persons or persons detained pending trial. However, it is concerned that, due to the limited number of separated places of detention available, this right is not always guaranteed in practice, especially in isolated or sparsely populated areas of the country.

24. **The Committee recommends that the State party ensure that migrants or members of their families detained for violation of provisions relating to migration are deprived of their liberty for as short a time as possible and continue to take steps to guarantee that they be held, in so far as practicable, separately from convicted persons or persons detained pending trial, in accordance with article 17 (3) of the Convention.**

25. The Committee is concerned at the information that the provisions of the Convention are not always respected in expulsion/deportation procedures, including due to the fact that:

- a) it is the same authority, i.e. the Police Commissioner, (Intendente General de Policia) instructing the case who decides on the merits of each expulsion/deportation case;
- b) there is no effective remedy available in practice against these decisions;
- c) article 131 of the Migration Law provides that when a deportation/expulsion order cannot be executed because it has been issued against a stateless person or a person lacking identity papers, or for any other justifiable reason, the Police Commissioner refers the concerned person to a penal judge and this person may end up in prison for up to three years, pending execution of the expulsion/deportation order.

26. The Committee recommends that the State party take the necessary measures to establish a legal framework which regulates expulsion/deportation procedures in accordance with articles 22 and 23 of the Convention, in particular:

- a) the person concerned shall have the right to submit the reasons he or she should not be expelled and to have his or her case reviewed by a competent authority;**
- b) if a decision of expulsion that has already been executed is subsequently annulled, the person concerned shall have the right to seek compensation according to the law;**
- c) in case of expulsion, the person concerned shall be informed without delay of his/her right to have recourse to the protection and assistance of the consular or diplomatic authorities of the State of origin or of a State representing the interests of that State.**

27. The Committee also recommends that the State party consider abolishing or amending article 131 of the Migration Law with a view to avoiding that violations of provisions relating to migration are treated in the criminal justice system.

28. The Committee is concerned at the information that there is in the State party a high number of persons in need of international protection, notably Colombians, who do not apply for asylum for a number of reasons (including the fear of being deported and stringent documentation requirements) and remain in a very vulnerable and marginalized situation.

29. The Committee recommends that the State Party ensure that migration control measures do not undermine the safeguards granted by either the 1951 Geneva Convention relating to the Status of Refugees, where applicable, or the present Convention, in order to guarantee that no vulnerable group is left without adequate protection.

30. The Committee, while noting the State party's measures taken to combat economic exploitation of children, including the creation of the "Foro Social Bananero" and the close cooperation with ILO-IPEC, continues to be concerned at the situation of migrant children working in banana plantations, who often work in hazardous conditions.

31. The Committee recommends that the State party continue to work towards the elimination of all kind of hazardous forms of labour for migrant children, and ensure regular inspections to monitor the proper implementation of this prohibition.

32. The Committee recognizes the efforts undertaken by the National Council for Children and Adolescents, including the development of training and awareness-raising programs in the area of trafficking in persons and commercial sexual exploitation of children. However, it is concerned at the involvement of migrant children in prostitution especially in the Lago Agrio region and at the fact that there seems still to be a sort of social acceptance of this criminal behaviour against children in the Ecuadorian society.

33. The Committee recommends that the State party:

a) **intensify its efforts to tackle the problem of commercial sexual exploitation of migrant children, especially in Lago Agrio, including by providing DINAPEN (the special police for children) with appropriate human and financial resources;**

b) **promote awareness in the public at large, including families and children, through information by all appropriate means, education and training, about the harmful effects of all forms of commercial sexual exploitation of children, including child prostitution.**

34. The Committee reminds the State party that migrant children involved in prostitution should always be treated as victims and never be criminalized nor penalized. Adequate mechanisms for their physical and psychological recovery and social reintegration should be put in place in this respect.

35. The Committee is concerned at the information that a considerable number of migrant children, and notably children of irregular migrant workers, do not have access to educational system in Ecuador and that this may be caused, *inter alia*, by the fact that there is a high number of children of migrant workers who are not registered at birth or afterwards either because their parents fail to register them for fear of being deported or because their registration is refused on the ground of the irregular status of one or both parents.

36. The Committee recommends that the State party take appropriate measures to ensure that access to education is guaranteed to all migrant children in accordance with article 30 of the Convention. Furthermore, the State party should intensify its efforts to guarantee that each child of a migrant worker shall have the right to a name and to registration of birth throughout the country, in accordance with article 29 of the Convention.

37. The Committee, while noting with appreciation the work performed by the National Council for Women (CONAMU) to include a gender focus in the State party's migration policies, is concerned at the information reporting the vulnerability of undocumented women migrant workers, especially those working in domestic service, many of whom are subjected to inequitable working conditions and other abuses.

38. The Committee recommends that the State party continue its efforts to protect migrant women domestic workers, including access to regular migration status and greater and more systematic involvement of the labour authorities in monitoring their working conditions. It also recommends that women migrant workers in domestic service have access to mechanisms for bringing complaints against employers.

39. The Committee notes that under the State party's public health system, every person is entitled to health services, irrespective of migratory status. However, the Committee is concerned about information that in practice migrant workers in irregular situation and members of their families face difficulties in accessing the public health system.

40. The Committee recommends that the State party strengthen its efforts to ensure, in accordance with article 28 of the Convention, that all migrant workers and members of their families – irrespective of their migratory status – enjoy in practice the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State party.

4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36-56)

41. The Committee is concerned that access to the executive bodies of trade unions in the State party is limited to Ecuadorian nationals.

42. The Committee encourages the State party to take the necessary measures to guarantee to migrant workers and members of their families the right to form, and to form part of the executive bodies of, associations and unions, in accordance with article 40 of the Convention as well as with ILO Convention n° 87 concerning Freedom of Association and Protection of the Right to Organise.

5. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64-71)

43. The Committee welcomes the reform of the Penal Code introducing the crimes of trafficking in persons and smuggling of migrants as well as the recent adoption of a Plan of Action against Trafficking in Persons and the information that there would be sufficient budget to ensure its implementation. The Committee notes that of the 152 cases of trafficking in persons transmitted to the Office of the Attorney General so far, 4 have resulted in a final conviction.

44. The Committee recommends that the State party continue and intensify its efforts to counter trafficking in persons, especially women and children, and smuggling of migrants, in particular by:

a) **ensuring an adequate implementation of the Plan of Action against Trafficking in Persons, including by providing adequate human and financial resources thereto;**

b) **taking appropriate steps to detect the illegal or clandestine movement of migrant workers and their families and punishing the criminals and/or groups who organize, operate or assist such movements;**

c) **strengthening its efforts to improve the effectiveness of the justice system and bring the perpetrators to justice.**

6. Follow-up and dissemination

Follow-up

45. The Committee requests the State party to include in its second periodic report detailed information on measures taken to follow up on the recommendations made in these concluding observations. The Committee recommends that the State party should take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to the National Congress and the Cabinet, as well as local authorities.

Dissemination

46. The Committee likewise requests the State party to disseminate these concluding observations widely, including to public agencies and the judiciary, non-governmental organizations and other members of civil society, and to take steps to make them known to Ecuadorian migrants abroad and foreign migrant workers residing or in transit in Ecuador.

Common core document

47. The Committee invites the State party to update its core document in accordance with the 2006 harmonised guidelines for the preparation of a Common Core Document (HRI/GEN/2/Rev.4).

7. Next periodic report

48. The Committee requests the State party to submit its second periodic report by 1 July 2009.