1. INTRODUCTION

In 2007 the Coalición por las Migraciones y el Refugio (Coalition on Migration and Refugees) prepared and submitted the first alternative/shadow report on the Ecuadorian Government's fulfillment of the Convention on the Rights of all Migratory Workers and Their Families. This report provided the basis for the United Nations Committee's recommendations on the implementation of the aforementioned Convention in Ecuador. In the report, the Committee requested the Ecuadorian government develop and present a new, updated report in July 2009.

Thus, in 2009, with this background, the Coalition on Migration and Refugees deemed it important to analyze whether or not the Ecuadorian government had effectively taken actions to guarantee the rights of people in situations of human mobility, particularly migrant workers and their families, to fully enforce the Convention. This updated report examines the period between 2007 and 2009, a period during which Ecuador underwent important political and social transformations, such as changes in government and the drafting of a new Constitution for the Republic.

In the new Constitution, which was put into effect in October 2008, advances such as recognition of the right to migrate, incorporation of principles such as non-discrimination based on migratory status, universal citizenship and the progressive end to the one's status as foreigner, were included along with certain express mandates regarding the protection of the rights of people in migrant situations. The new Constitution has become a basic legal instrument for the protection and promotion of the rights of migrant people and from it emanated the obligations of the State which, in great measure, coincide with the recommendations made by the Committee in 2007.

Likewise, global events have indisputably affected people in situations of human migration and the Ecuadorian government's performance on migration issues. In order to reflect upon the various specific dynamics of human mobility taking place in Ecuador, this report has been divided into four chapters: emigration, immigration, illegal migrant trafficking, and slavery.

Thus, the intent of this new report is to provide updated information to guide both the construction of public policy and the defense of rights of people in situations of human migration.

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1 To date the Coalition for Migrations and Refugees is formed by Catholic Relief Services, Fundación Esperanza, Human Mobility Pastorate (Pastoral de Movilidad Humana) of the Ecuadorian Episcopal Conference, Andean Program of Human Rights (Programa Andino de Derechos Humanos) of the Simón Bolívar Andean University, Terre des Hommes Italy, Scalabriní Missioners (Hermandas Misioneras Scalabrinianas) of Ecuador, and independently, the following professionals: Javier Arcentales, Gina Benavides, Lina Cahuaqui, and María Mercedes Eguiguren.
2. IMMIGRATION

2.1 Migratory balances

- Ecuador has not consolidated a statistical information system that would allow for a clear identification of the current situation of the migrant population and, based on that information, an appropriate characterization of migratory flows.

- Between January 2000 and December 2008, according to data from the Ecuadorian Statistics and Census Institute, the migratory balance in Ecuador was 1,268,512. During this period of time 7,158,012 people entered Ecuador and 5,889,500 people returned to their countries of origin. According to the same source, those nationalities with the greatest incidence of migration in Ecuador were Colombia, Peru, the United States, China, Spain, and Cuba, in that order.

- One observation is that although people of Colombian and Peruvian nationality continue to make up the majority of migrant nationalities in Ecuador, during the past four years people from these two countries have regularly entered Ecuador with less and less frequency.

- Since 20 June 2008 Ecuador has eliminated the requirement for an entry visa for all nationalities and the Ecuadorian government permits foreigners to stay in the country up to 90 days simply by entering with a valid passport. The entry of Cuban and Chinese citizens has increased exponentially since the implementation of this measure. Between 2007 and 2008, immigration of Cubans increased by 130% and their migratory balance reached 4685.71%; meanwhile, immigration by Chinese citizens increased by 198% and their migratory balance reached 1679.60%

The arrival of foreigners to the country has, unfortunately, been accompanied by xenophobia and discrimination on behalf of authorities as well as the host population.

- Claims have been made that Chinese citizens exit the country irregularly and head for the United States without registering with the National Migration Service.

Recommendations

- A national immigrant registration system should be designed and implemented to include those whose migrants in both regular and irregular situations, disaggregated by gender, age and reasons for entering the country.

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• A single national entity should articulate all statistical information and ensure that additional information is requested from all relevant government entities and other key actors. This could be done by the INEC.

• The Andean Card for Migration (Tarjeta Andina de Migración -TAM) should be adjusted in order to ensure a better characterization of flows. Work, study, trade and other reasons should be expressly highlighted, as motives for entering the country.

2.2 Regulatory and Institutional Advances

• The most significant regulatory advance to take effect regarding immigration was the new Constitution of the Republic of Ecuador along with a series of policies established to protect human rights, such as: The Recognition of the Rights of Foreigners; the Right to Migrate; the Obligation of the State Regarding People in Situations of Human and Institutional Mobility; and International Relations and Human Mobility.

• When President Rafael Correa’s government took power, the National Planning and Development Secretariat SENPLADES was created. Its mission was to manage the National Planning System at the sectoral and territorial levels, establishing national objectives and policies, with citizen participation. In addition, various coordinating ministries were created to manage the executive branch. Despite this, there have been no notable changes in the abilities of the government institutions to deal with immigration.

Recommendations

• The Ecuadorian government must reform the legal system in order to develop and, in practice, ensure the rights acknowledged in the Constitution for foreigners, as well as the principles established in the Régimen del Buen Vivir (the Wellbeing Regimen) and others relating to international relations and human mobility.

• The Government must immediately purge and restructure the competencies of various government institutions as regards immigration.

2.3 Public Policies

• Ecuador has progressively advanced, at the constitutional level, toward the protection of rights of migrant workers and their families who enter the country. In addition, over the past few years, Ecuador has established guidelines for the government and for development related to public policies and the protection of rights of people in situations of human migration. Despite this, in practice, the national government’s discourse continues to be focused on territorial security, selectively criminalizing immigration and exercising national sovereignty over people who, for various reasons, enter
• Toward the end of December 2007 the National Migration Plan, focused on emigration, was publicly presented. The National Migration Secretariat is responsible for executing this plan.

• In February of 2007, then Government, Police and Religious Affairs Minister Gustavo Larrea announced that Ecuador would regularize the status of 500,000 Colombian citizens in irregular immigration situations, and would speed up the processing of 25,000 refugee applications. At the time he also ruled out the requirement for Colombian nationals to request entry visas to enter Ecuador. However, this measure has not resulted in any concrete regularization process. Thus, the enhanced registration process for the Colombian population in need of international protection, although it arose as a mechanism in response to the limitations of the refugee acknowledgement system, has become an important alternative for regularizing the Colombian population in Ecuador. This is due to the absence of a parallel regularization system (open to non-refugees). As a result of this lack of alternatives, a distorted refugee system has resulted and, in the end, the Colombian population, whether refugee or not, makes use of this regularization mechanism.

• In June 2009 the Ministry of Government, Police and Religious Affairs, by means of a ministerial agreement, reduced the cost of family-based visas to 50 dollars (though this does not include those people who are married legally or through common law).

• In June 2008 the Government decided to suspend a measure requiring that legal background checks be conducted as a condition for entry by Colombian nationals. This was done in order to facilitate and expand trade and tourism between the two countries and apply the principle of free human circulation. However, this measure was later re-implemented as explained further below.

• On 20 June 2008 an Executive Decree was passed which, “in application of the principle of free human movement and in order to protect and promote tourism” stipulated that “citizens of any nationality may enter Ecuador without the need for a visa.” Today this measure is still valid for all countries of the world and, upon analyzing the migratory balances, it is evident that it has not resulted in a significant increase in entry by foreigners, except for Chinese and Cuban nationals.

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3 The Enhanced Registration Program establishes that the Committee to Determine the Conditions of Refugees in Ecuador will carry out itinerant registration campaigns in order to register the Colombian population in need of international protection, the first phase of which is located along the Northern border and which, for various reasons, has not participated in the ordinary registration process established by Ecuador. This process began in the Province of Esmeraldas and will extend to the Provinces of Sucumbios, Orellana, Carchi and Imbabura.

4 According to ACNUR there are approximately 250,000 Colombian nationals in Ecuador who need protection and of these, only 16% have accessed the formal registration system.
In December 2008 the Ecuadorian Government accepted the Coalition for Migration and Refugees’ proposal to prepare an integral human migration bill according to the principles of the new Constitution and international human rights standards. This process to create dialogue between civil society and the state was cut short in April 2009 by a series of restrictive measures adopted by the Ecuadorian Government which affected the rights of immigrants, and brought about the departure of several civil society organizations. Although the government continued to prepare the bill, to date this process has not been concluded. Furthermore, there is evidence of a lack of institutional support for its preparation, as currently 3 government entities claim to be promoting it (SENAMI – Ministry of Justice and Human Rights; Ministry of Foreign Affairs, Trade and Integration; and the National Assembly), but there is little proof of this.

In August 2008, and as a consequence of the Colombian military incursion into Ecuador on 1 March 2008, the government adopted a series of restrictive migratory policies that contradict the constitutional mandate, based on a vision of improving security, increasing selectivity, and criminalizing migration. Thus, the Minister of Foreign Affairs, Trade and Integration expressed that “Ecuador, to its great regret, had decided to reinstate the requirement for a legal background check, as a sovereign measure to differentiate and avoid entry by actors directly implicated in the violence occurring in Colombia.” This measure generated discrimination and stigmatized the Colombian population by directly linking displaced Colombians to the lack of security and the delinquency that exists in the country.

Although the issue of refugees is not directly related to the Migrant Worker Convention, it is important to note that the reform of Decree 3301 which stipulates the process for applying for asylum, generates ample discretion for eligibility authorities at the General Asylum Office, and affects people in situations of human mobility generally.

Beginning on 15 March 2009, migratory control operations for deportation were intensified throughout the country. These controls are directed mainly at the Colombian and Peruvian populations. Deportation cases are being recorded that do not abide by due process and that violate the right to proper defense particularly in cases involving children and adolescents. Furthermore, there have been documented cases of collective expulsion of people in need of international protection, legal immigration proceedings in languages not understood by those who are implicated, and even attempts to deport victims of slavery and trafficking.

The Ecuadorian legal system regarding migration has not been substantially modified. In effect, the Migration and Immigration Laws that were codified in 2004 and 2005 are still in effect, despite the fact that they were issued in 1971, and are fundamentally based upon policies that distinguish between regular and irregular migrants. In Ecuador, people in irregular situations are
still susceptible to detention, deportation, and prohibition from re-entering Ecuadorian territory.

- It is also important to note that there are no defenders or public defenders assigned by the Ecuadorian state to defend people who have no resources of their own to hire one. Foreigners subjected to deportation processes in most cases do not have legal assistance during the procedure and if they do, it depends on each individual person’s economic abilities. This is evidence of the selectivity of the system and violates the parity of arms principle.

- Throughout the country there is evidence of discrimination and xenophobia on behalf of the Ecuadorian population, increasing the vulnerability of the foreigners who live in Ecuador. The Coalition has documented several cases of violence ignited by xenophobia in the country.

- The situation related to visas highlighted in the first shadow report still persists, with the percentage of the population accessing visas remaining very limited. Therefore, as long as access to rights is subject to discrimination based on migratory condition, a great percentage of the foreign population in Ecuador will continue to live in irregular situations which frequently result in detention and then eventual deportation from Ecuador.

**Recommendations**

- Reform or derogate the secondary norms that contradict the Constitution and international human rights standards, in particular those involving foreigners in Ecuador. Take into account the constitutional possibility of not applying the contradictory secondary norms and at the same time applying the principles of interpretation of rights.

- A coordinating entity for public policy on migratory issues should be defined and institutionalized, created with a human rights focus and acknowledging the full set of migratory situations in Ecuador, including immigration, emigration and refugees.

- The Ecuadorian government should definitively suspend the measure requiring legal background checks on Colombians as a requirement for entry into Ecuador.

- The government should be obligated to construct a sustained regulatory policy as a mechanism to promote the full incorporation of the foreign population into the country to avoid stigmatization and limitations on their rights. This policy must be accompanied by efficient and urgent mechanisms directed at ensuring that advances in public policy become reality, and that exploitation of workers is eliminated. The policy should instead promote citizen participation by foreigners, and ensure access to a permanent, formal education system for migrant individuals.
• The government should derogate security agreements, decrees and policies that promote the stigmatization and persecution of the immigrant population. Reform of the legal system should include both the right to migrate and stipulations against identifying a person as illegal based on their migratory situation. Based on this definition, the government should substantially suspend or modify deportation processes, and reform the Ecuadorian visa access system, eliminating criteria and discriminatory selectivity requirements for foreigners.

• The government should implement an extraordinary regularization process nationally for the entire foreign population that resides in Ecuador, regardless of their nationality or the activities they carry out. At the same time, the government should take measures against the persecution and criminalization of undocumented foreigners, mainly Colombians and Peruvians. This process must be accompanied by consistent strategies to inform and educate the population, directed at eliminating xenophobia and discrimination toward foreigners who are present throughout the country.

• The government should promote the fulfillment of permanent migratory statutes with neighboring countries, based on an adequate diagnostic of the characteristics of migratory flows and each population’s real needs for regularization. Eliminate criteria for selectivity or discrimination as well as the eminently formal labor focus these statutes have been given.

3. EMIGRATION

3.1. Contexts of Ecuadorian emigration

3.1.1. Characterization of migratory flows

• There was a significant emigration process from Ecuador to various countries in America and Europe after the year 2000. However, in 2004 and 2005 there was a decrease in these migration patterns to the implementation of restrictive policies in the main destination countries: Spain, the United States, and Italy. Nonetheless, data indicates that the emigration levels to these countries are still greater than in years prior to 2000. Migration to Latin American countries has not been carefully studied but, according to migratory balances data, Argentina, Chile and Venezuela are the main destination countries.

• The Ecuadorian government has not achieved the implementation of a reliable and timely information system that would allow for the characterization of the dynamics of migration. To date the most relevant information available is based on the 2001 Census, the annual migration reports, and periodical surveys. After a decade of using these tools, it is clear that this information is not sufficient for the adequate formulation and implementation of public policies dealing with this issue.
Recommendations

- The government should create reliable official information-gathering systems on human mobility and purge that data which may cause confusion during research or the formulation of public policy.

- Cross-reference the information issued by the General Migration Service of the National Police with other public entities in order to verify and synthesize data from different sources.

3.1.2. Restrictive migratory policies in destination countries and the reaction of the Ecuadorian government

Regularization

- Harsher migratory policies in Europe and the United States have had immediate consequences for both the countries of destination and origin.

- Within the destination countries, none with the greatest number of Ecuadorian migrants has implemented regularization programs. The last took place in Spain in 2005.

- An estimated 30% of the Ecuadorian emigrant population is in an irregular immigration situation. This number could actually be greater due to the adoption of restrictive measures and the effects of the world economic crisis. Because of this and due to unemployment, many Ecuadorian emigrants have transitioned from regular to irregular immigrant situations, and have had to deal with the consequences of this on their ability to exercise their rights.

- A direct consequence is that family reunification processes have become more difficult. According to the Pastoral de Movilidad humana (Human Mobility Pastorate) in Ecuador, this type of process is carried out amidst bureaucratic obstacles and frequent mistreatment by consular employees. There is also evidence of an almost total paralysis of the Migratory Workers Selection Unit, an entity tied to the Ministry of Foreign Relations, Trade and Integration which was created within the framework of the Convention to Regulate Flows between Spain and Ecuador.

- To date there has been no effective encounter or dialogue between the Ecuadorian government and the main receiving countries, which could lead to the implementation of agreements to promote regularization processes.

Recommendations

- Promote bilateral agreements with the main countries that receive Ecuadorian emigrants in order to ensure the flexibility of migratory policies and to guarantee the acknowledgment and protection of the rights of migrants through inclusion in public policy in these countries.
• Form alliances with other countries that are also sources of outbound migrants in the region in order to jointly encourage reforms in the migratory policies of receiving countries.

Rights violations: conditions of detention and deportation

• Harsher migratory policies in destination countries have resulted in inhumane treatment of migrants, particularly in detention and the privation of the rights of those migrants who are in irregular migratory situations. There is evidence of an abuse of power within these processes, characterized by confinement and lack of communication, the use of force, the lack of interpreters, overcrowding, abuse and mistreatment.

• The Ecuadorian Public Defender visited internment centers for migrants in the United States and identified numerous violations of human rights among detained Ecuadorians. In his report he stated that “the group of detained countrymen mentioned that the Ecuadorian Consular Service does not visit them periodically.” This demonstrates that there are limitations on the Ecuadorian Consular Service’s ability to protect Ecuadorians in foreign countries.

• Between 2001 and 2007 the number of deportations of Ecuadorians has remained steady, but recent increases have been identified in the past few years. The main countries from which Ecuadorians are deported are the United States, several Central American countries, and Spain. An average of 100 Ecuadorians are deported monthly from the United States. The deportation processes are increasingly abbreviated, without the guarantee of due process and with fewer possibilities for objection.

• In light of this situation, there are no coordinated actions by Ecuadorian institutions. The existing institutions focus on the humanitarian elements of migration and not on detention or deportation conditions.

3.2. Regulatory Reforms

• Maintain regulatory advances regarding emigration by incorporating migration issues into the Constitution of the Republic through specific reforms such as: elimination of the need for a permit to exit the country, elimination of the requirement of a military service record to exit the country, and the issuance of Agreement 337 which guarantees access to education for the migrant population.

• Despite the constitutional advances made, there is evidence of limitations on the process of adjusting secondary legislation. Work continues on the issue of human migration based on outdated legislation that does not emphasize the difficult situation facing Ecuadorian emigrants and their families.

Recommendations
Generate legislation that protects the rights of Ecuadorians in foreign countries and their families. It must be integral and coherent with the protection of people in other migratory situations such as immigrants and refugees. In addition, it is necessary to define and provide content for new constitutional provisions to make their application more visible and interpret their meaning.

3.3. State institutions and public policies to protect the rights of emigrants and their families

- Regulatory and institutional confusion about roles in managing human migration continue. Several state institutions that are either part of the executive branch or are autonomous are responsible for managing specific, diverse elements of human migration in Ecuador.

- Coordination between the various state entities is minimal and in some cases based upon the will of certain employees, rather than on institutionalized regulations or procedures. This applies specifically to the executive branch.

Ministry of Foreign Affairs, Trade and Integration

- Although it is the only state entity accredited before other Governments that can take action to protect people overseas, in practice its representatives overseas have prioritized trade relations with other States above the protection of rights.

- During the past two years there has been an increase in the number of consulates and a virtual consular assistance system has been designed, but services focus on administrative procedures rather than migration issues.

- Leaders of migrant organizations supported by an academic study on the scope of consular services, have determined that there are deficiencies in the assistance provided by the consular offices. There is evidence of a lack of resources, confusion among the population about the roles the consulate plays, and little or no opportunity assistance is provided in a timely fashion.

- Unconstitutional legislation is still upheld and this makes more difficult the exercise of rights such as those highlighted in Article 20 of the Travel Documents Law and the Naturalization Law on Recovery of the Ecuadorian Nationality.

National Secretariat for Migrants

- Its actions overseas are limited as it is not an official representative before other States and because the current migration dynamics surpass the responsibilities designated to this institution. In addition, despite having the rank of ministry, it is limited in resources and has very limited authority within the executive branch.

- Migrant and church organizations that assist this population indicate that there are limitations in the programs created and that the assistance programs lack operational capacity. In addition, they question the clear relationship that exists
between the promotion of SENAMI programs, and projects with the clear political support of the government.

Public Defender

- The public defender has established some remote locations in select cities overseas and maintains agreements for the protection of emigrants and to guarantee due process. This representative has visited Madrid, Rome, New York and Houston in order to learn more about the situation of the emigrant Ecuadorian community, to dialogue with authorities from these countries through the Ecuadorian Foreign Service, to coordinate actions with SENAMI and the Foreign Service, and to sign cooperation agreements with the Public Defender of Spain and the Civil Defender of Tuscany and Liguria, in Italy.

- Its actions have been acknowledged by social and church organizations.

- Among the problems it faces are the technical difficulties involved in representation overseas. Therefore it is currently in undergoing internal restructuring.

Recommendations

- Generate public policy that will improve human living conditions so that the structural violation of rights, above all economic, social and cultural rights, does not become a motivating factor behind emigration. Instead the voluntary right to migrate must be guaranteed.

- Clearly define institutional competencies related to human migration and ensure coordination between Ecuadorian institutions overseas for greater protection of human rights and to avoid duplicity of actions and wasted resources.

- Construct public policies in a participatory manner, allowing people in situations of human migration to be involved in their design and possibly, in their execution, to guarantee efficacy.

- Strengthen the focus on the defense of human rights within the Foreign Service and adjust their services to help meet the needs of the Ecuadorian emigrant population.

- Take into account and apply the recommendations listed in the defense report issued by the Public Defender’s National Human Mobility Commission on the protection of the rights of Ecuadorians living overseas.

- Incorporate as fundamental points in Ecuador’s foreign policy the generation of dialogue and advocacy with host countries with a focus on improving migratory policy and acceptance in favor of the rights of Ecuadorian emigrants.
• Train members of the Foreign Service and other authorities and employees involved in assisting people in situations of human migration, on the rights of emigrants.

• Generate possibilities for investment of remittances that won’t imply manipulation or restrictions on the use of capital or goods by the state.

• Sign internal institutional agreements with civil record entities, notary publics, courts, traffic police, and others, in order to provide information and documentation needed by emigrants overseas.

3.4. Fulfillment of the Ecuadorian Government’s obligations regarding the rights of emigrant Ecuadorian workers

3. 4. 1 The right to migrate and the non-criminalization of emigration

• This right sets a global precedent and is a challenge for the Ecuadorian government. In order to be fully implemented it will require regulatory reorganization and the implementation of an integral and coherent public policy that guarantees that public officials provide adequate information at each of the moments during the migratory process including: decision to migrate, travel, securing cohabitation at the new destination, and eventual return. Likewise, the government has an obligation to take progressive actions to guarantee better living conditions for its citizens, both those who leave and those who stay, so that the right to migrate will be exercised freely. It also implies the need for measures that combat the criminalization of people who migrate under irregular conditions, and measures to make the prevailing restrictive measures more flexible.

Recommendations

• Guarantee the right to informed migration by implementing public policies that provide clear and timely information for people on the conditions for emigration, which will also reduce the incidence of trafficking and slavery.

• Train migratory police and other relevant authorities on the rights of people in situations of human migration, in order to avoid the criminalization of Ecuadorians who seek to leave the country, regardless of motivation.

3.4.2. The right of emigrants to equality and non-discrimination

• The political and social contexts of the main destination/host countries today imply restrictions on the rights of immigrants, especially economic, social and cultural rights, particularly if they are in an irregular situation. This results in cases of discrimination that violate the principle of equal human rights and that prevent migrants from fully exercising their rights. The limits established by the receiving countries’ regulations and policies do not imply a restriction on the
obligations of the Ecuadorian government toward its citizens. To this end, and in 
view of increasing xenophobia which, on several occasions, has resulted in 
physical aggression and even death, it is essential that governmental entities 
overseas act immediately and take action in the respective country and/or at a 
national level, to establish sanctions and provide reparation for the rights 
violated.

Recommendations

- Implement institutionalized procedures for agile and effective response by the 
  Ecuadorian government in emergency situations that violate or threaten to 
  violate the rights of Ecuadorians overseas, whether stemming from private or 
  government actions.

- Promote the corresponding legal actions in destination countries in response to 
  violations of Ecuadorians’ rights, in order to guarantee their right to justice and 
  reparation.

- Promote actions among international entities in cases where the rights of 
  Ecuadorians overseas have been violated, when the measures adopted by the 
  government of the destination country are inadequate or insufficient.

3.4.3. The right to a nationality

- The right to a nationality has been violated, especially in Spain, as of the 
  adoption of the new Ecuadorian Constitution. The right as expressed in the new 
  Constitution, stipulates that Ecuadorian nationality must be awarded to all 
  children born to people of Ecuadorian nationality. However, the Government of 
  Spain refused to acknowledge Ecuadorian nationality for children born in Spanish 
  territory. The Ecuadorian government has begun to take actions with regard to 
  this and hopes that the agreement reached will include an acceptance of dual 
  nationality, with no corresponding restriction on Spanish nationality per the 
  rights of that population.

Recommendations

- Generate legislation that develops constitutional principles regarding nationality, 
  taking into account people’s migratory objectives and the protection the State 
  must provide.

3.4.4. The right for Ecuadorian emigrants to return to their country of origin

- The right to return to their country of origin, consecrated in several international 
  instruments and in the current Constitution, is based on free will, as long as the 
  return is voluntary and not forced. In this sense the Ecuadorian Government is 
  obligated to abstain from creating obstacles to free entry and to implement the
necessary measures to ensure that return in not forced, and in those cases where it is forced, to ensure the reparation of rights that have been violated. There have been cases where entry has been restricted for children of Ecuadorian nationality who did not have appropriate passport documentation. The Public Defender intervened in order to deal with these specific situations. This requires the Immigration Police to abide by the regulatory framework that guarantees said right. Another concern is related to the effects of the world economic crisis that is causing several countries to implement voluntary return plans. In practice, this can result in forced migration processes. The Ecuadorian Government must be aware of this and safeguard the rights of its citizens overseas, especially when trends show that only a minimal percentage of people wish to return.

Recommendations.

- Accompany and ensure respect for the rights of Ecuadorian emigrants who have been detained, for migratory or any other reason, and for those who have been forcefully returned from other countries.

- The Immigration Police must apply constitutional human rights and nationality principles when managing ports, airports and borders in order to ensure that migrants do not end up in legal limbo situations that make them even more vulnerable and less likely to exercise their rights.

3.4.5. The emigrant population’s rights to participation

- Between 2006 and 2009 the Ecuadorian population overseas participated in 6 electoral processes and the electoral registration roll is being expanded, which is an advance. However, dissemination of information is still largely restricted to affinity networks and it does not reach most of the migrant population. Furthermore, in general, this dissemination does not respond to clauses that were established in the new Constitution, in which the right to participation rebases the electoral dimension and crosses various decision-making, accountability and social control fields. Therefore, the norms and policies should be reordered to respond to these changes.

Recommendations

- Include regulations that make the exercise of emigrants’ rights to participation viable in the corresponding legislation, taking into account that the current Constitution establishes that the right to participation is not limited to simply voting.

- Provide the necessary resources to consulates and embassies overseas to ensure participation processes that include wider dissemination practices.

4. MIGRANT TRAFFICKING
Since 2006 the Ecuadorian government has been executing a "National Plan to Combat Human Trafficking, Illegal Migrant Trafficking, Sexual Labor Exploitation, other Forms of Exploitation and Prostitution of Women, Children, and Adolescents, Child Pornography, and the Corruption of Minors."

14 government institutions participate in the implementation of the plan which, according to public information, requires the participation of 3 work sub-committees: Prevention; Research and Sanction; and Protection and Restitution of Rights. However, the Public Defender’s Human Mobility Commission and the Director of Human Rights of the Ministry of Government, Police and Religious Affairs have reported that the Decree that will guide the formation of these subcommittees has yet to be issued. The objective of this decree will be to institutionalize the participation of each of the institutions that form it, delegate the Technical Secretariat (currently undergoing a period of transition between the Ministry of Government and Police and Religious Affairs) to the Ministry of Justice and Human Rights, and prepare internal regulations for operations.

- We should clarify that in terms of migrant trafficking this plan has not carried out any specific actions, and, if it exists, no information referring to prevention, investigation, or the sanction of crimes, has been provided.

- No government entity officially keeps records of the number of people intercepted or rescued from migrant trafficking, such as those involved in boat or other transport accidents. The National Immigration Director maintains that keeping these types of records is not the responsibility of that office. Until now, this information has only been available via news media outlets.

- The incidence of this type of crime is partly the result of the implementation of restrictive policies in the destination countries, which cause a high number of individuals to decide to emigrate irregularly.

4.1 Entry of foreigners into Ecuador

- Ecuador has no information system to track those foreigners that enter the country irregularly, which makes it nearly impossibly to identify those individuals that are victims of illicit human trafficking networks.

4.2 Departure of Ecuadorians and foreigners from Ecuador

- It has not been possible to determine how many Ecuadorians or foreigners depart Ecuador irregularly. This is concerning because of the fact that many people contact illicit trafficking networks in order to emigrate to the United States, Spain or Italy, the principal destinations for the Ecuadorian emigrant population.

- The SENAMI and the National Immigration Director are responsible for recording the number of Ecuadorians deported or repatriated from the United States and other countries, but this is limited to basic data on identification and does not
further investigate the conditions of the deportation or the manner in which emigrants reached the countries from which they were repatriated. This kind of investigation would allow for better data on the trafficking phenomenon and on its dimensions, and would guarantee adequate protection and support for victims.

- People of Chinese and Cuban nationality have been observed entering Ecuador in order to then travel to the United States; however, there is no official data to verify this trend except for a significant increase in the migratory balance of people of these nationalities.

- The “National Plan to Combat Human Trafficking, Illegal Migrant Trafficking, Sexual Labor Exploitation, other Forms of Exploitation and Prostitution of Women, Children, and Adolescents, Child Pornography, and the Corruption of Minors” has 3 targeted approaches to combating illicit human trafficking: prevention, investigation, and the sanction/protection of rights.

4.3 Prevention

- Based on this information it can be concluded that Ecuador has not taken effective action to promote regular emigration. Furthermore, no significant advances have been made to ensure destination countries reformulate their border closure policies. In addition, there is no evidence of concrete actions taken by the government to combat or stop violations of human rights among foreigners.

Recommendations

- Ecuador’s foreign policy must determine that, as a fundamental principle, transit and destination countries protect the rights of Ecuadorians. If current migratory policy both in Europe and in the United States is gradually restrictive, the population who intends to emigrate will increasingly tend to do so via irregular means, as regular means become less and less viable for migrants with limited resources.

- The “National Plan to Combat Human Trafficking, Illegal Migrant Trafficking, Sexual Labor Exploitation, other Forms of Exploitation and Prostitution of Women, Children, and Adolescents, Child Pornography, and the Corruption of Minors” must be revised and re-designed according to the specifics of each situation (migrant trafficking, human slavery with the intent to sexually exploit, slavery for labor, etc.) so it can respond to the country’s specific demands and situations.

4.4 Investigation and Sanction

- Although Ecuador has a legal framework that allows for the investigation and sanction of those who are responsible for the crime of illicit human trafficking, this issue also has social implications, beyond what can be dealt with within a legal framework.
The demand for services presented by traffickers, coyotes and “chulqueros” will continue as long as migratory policies remain restrictive in transit and destination countries. In addition, the incidence of denunciation of coyotes is very low.

FOLLOW-UP ON CRIMES LINKED TO HUMAN MOBILITY
PICHICHA JANUARY 2007 TO JULY 2008

<table>
<thead>
<tr>
<th>Type of crime</th>
<th>Number of files</th>
<th>Nationality</th>
<th>Procedural status</th>
</tr>
</thead>
</table>
| Illegal migrant trafficking   | 15              | 14 Ecuadorian | 4 Guilty verdict  
|                               |                 | 1 Spanish   | 3 Cases dismissed  
|                               |                 |             | 5 Subpoenas to appear in court  
|                               |                 |             | 1 Suspended (escaped)  
|                               |                 |             | 1 Cautionary (accessory after the fact)  
|                               |                 |             | 1 No information  
| Migratory fraud               | 14              | 14 Ecuadorian | 2 Guilty verdicts  
|                               |                 |             | 2 Judgments of acquittal  
|                               |                 |             | 5 Declaration of nullity  
|                               |                 |             | 1 Subpoena to appear in court  
|                               |                 |             | 3 Suspended (escaped)  
|                               |                 |             | 1 Motion to appeal  

Prepared by: Observatorio de la Movilidad Humana DMQ – MDMQ/Fundación Esperanza

In practice, there is no purpose behind the detention of the coyote if, in the end, his role becomes socially legitimate when he provides the only available opportunity for a person to make their migratory goals a reality. On the other hand, illicit trafficking networks exert pressure upon society because they have sufficient resources to threaten and intimidate the population that benefits from their services as well as competent public officials, and in some cases to also buy off public authorities who investigate or attempt to investigate this type of crime.

This would easily explain why in the first 9 months of 2008, in the province of Pichincha, only 29 criminal proceedings were initiated, 15 specifically concerning illicit trafficking, and another 14 regarding migratory fraud. Of these, in only 6 cases were subpoenas to appear in court issued during the same period, and only 6 guilty verdicts were read.

Furthermore, nothing has been done to find ways to compensate the family members who are victims of this crime, beyond financial means. In response, the “Asociación 15 de Agosto” was formed by family members of victims on a boat that sank in 2005, in which 96 Ecuadorians who had been traveling in a clandestine manner disappeared. Although an attorney from the Human Mobility Pastorate (Pastoral de Movilidad Humana) of Cuenca intervened and secured a 12-year sentence for the traffickers, to date there has been no real process for

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5 Telephone interview with the Asociación 15 de Agosto (Cuenca)
integral reparation that includes the families’ rights to recover the bodies, their right to know the truth about what happened, and the recovery of the investments their deceased family members made in the trip.

- Clear mechanisms and definitions regarding what “accompanyment” means within government institutions for victims and their families have not yet been established, which is one of SENAMI’s main action principles.

### 4.5 Protection of rights

- There is much training to be done, especially among Immigration Police, in terms of their ability to identify the victims of an illicit human trafficking crime and their pursuit of those responsible. Also, aside from the protection system for victims and witnesses, there is no integral protection system for victims of illicit human trafficking, especially when, for various reasons, they do not wish to participate or support the penal process against those who are responsible.

- In the deportation hearings the only element assessed is whether or not the person is in a regular or irregular immigration situation. The officers and other officials that participate in the hearings have not been made aware of how to identify cases in which people subjected to deportation proceedings may be victims of illicit trafficking crimes or slavery.

### RECOMMENDATIONS

- The government must implement a policy to combat illicit human trafficking that includes a sufficient annual budget, interstate coordination based on competencies, and an integral victim protection system.

- Ecuadorian foreign policy must implement measures to ensure migratory policies are made more flexible in transit and destination countries, and to guarantee effective state presence, through the consular representatives in these countries, as a fundamental axis for protection from this crime.

- The National Police, the General State Investigator and the Judicial Branch must implement continuous training processes about this crime, with a focus on distinguishing the victims from those responsible for the crime, and protection of the rights due to these victims.

### 5 HUMAN SLAVERY

- Prior to analyzing the functions of each of the axes of the Plan as regards human slavery, it is important to note that both Civil Society and International Organizations agree that the plan must exclusively deal with human trafficking. In effect, the actions taken by the State have, within this plan, primarily focused on prevention, investigation, sanctions, and reparation relating to this crime.\(^6\)

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\(^6\) Taken from interviews done within the Framework of the process to construct the Integral Human
The following is a brief analysis of its implementation, divided into the axes the plan has designated:

5. **Prevention**

- Ecuador has established public policy on assistance, regulation and control and until now has been unable to consolidate and ensure that all State institutions work toward a focus on human rights. This would mean that all institutions would collectively view people as subjects of human rights rather than objects to assist when implementing these policies.\(^7\)

- It is important to remember that the dissemination campaigns related to this crime and its consequences and its effects on the population only make up part of the prevention process. The most important component must necessarily be the implementation of public policies that reduce the vulnerability of the many groups who are potential victims of this crime.

5.2 **Investigation and Sanction**

- It should be noted that Ecuadorian public policy focused on slavery deals primarily with persecution, based mainly on support from the Embassy of the United States. Therefore, it is important to promote the introduction of a more integral approach, above all promoting protection for victims of this crime.

5.3 **Investigation**

- This axis covers the criminal sphere of combating slavery. In Ecuador, since 2002, there has been an oral accusatory penal system in place, in which the role of the State’s General District Attorney is to investigate and make accusations within slavery proceedings.

- There are no investigators specialized in this crime on the national level. In effect, in certain provinces of Ecuador the few investigating agents that exist are responsible for investigating all types of crime. Only in large cities, such as Quito, Guayaquil and Cuenca, are there units specialized by type of crime; however, in these cases the investigation of human slavery crimes is assigned to the sexual crimes units, despite the fact that sexual exploitation is only one of the potential objectives of human slavery.

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The National Police currently have an Anti-Slavery Unit which is part of the National Office of Specialized Police for Children and Adolescents (DINAPEN), and its personnel does not have sufficient operating capacity to cover all the cases that arise nationally. The budget and logistical resources designated to these efforts are insufficient to investigate each case, and to guarantee victim protection through legitimate intelligence-gathering processes that result in strong verdicts against those who are responsible.

5.4 Sanction

In the plan there is no representative designated for the judicial function and in the cases in which those responsible for human trafficking have been sentenced, their sentences have been very small. The impunity level is very high. In January 2010 there was one case of dismissal involving 3 people implicated in child and/or adolescent slavery with intent to sexually exploit and the National Court of Justice modified prior guilty verdicts.

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*Incluye Galápagos

Prepared by:Coalición para las Migraciones y el Refugio, Francisco Hurtado, 2009

As indicated in the table above, of the total number of slavery crimes denounced and presented to the District Attorney at the national level in 2005, 2006 and 2007 only 5.5% (8 of 146 cases) led to a judgment hearing before the courts and only 3.4% (5 cases) ended in a guilty verdict for those responsible.

There is evidence that in the Eastern region (in the provinces of Sucumbíos, Orellana, Napo, Pastaza, Morona Santiago, and Zamora Chinchipe) no cases have been denounced. Two fiscal orders were initiated and only one of them led to an accusatory sentence by the State's General District Attorney, despite the very high incidence of this crime in Sucumbíos and Orellana.

The State's General Fiscal Attorney's statistical information also refers to the crime of sexual exploitation which, although it is an independent crime, is sanctioned with less strict punishment. This means that some occasions it could result in slavery being virtually invisible as only sexual exploitation would be investigated and sanctioned. Also, other cases of human slavery in which the
victims are adults would also become invisible, as would those with other foci (exploitation of beggars, labor exploitation, theft, the sale of narcotics, forced begging for false purposes, the sale of handcrafts, trafficking of human organs, child labor exploitation, and others).

5.5 Protection and Restitution of Rights

5.6 Victim and Witness Protection System

- The victim and witness protection system offered by the State’s General Investigator provides very little assistance to victims of slavery due to the lack of trained personnel and resources.
- This system exclusively protects those victims and witnesses who participate in the penal process. It does not provide protection for all victims, and those who do not take the stand within penal processes, or those who stop collaborating within the process, are not protected.

5.7 Integral Protection for Victims

- Currently the Ecuadorian government partially funds projects involving safe houses and integral assistance to victims of slavery through specialized civil society organizations, only in Machala and Quito. The remaining shelters and safe houses that the Ministry of Economic and Social Inclusion administers directly do not have the minimal conditions necessary to provide integral protection to victims of slavery.
- The Public Defender has indicated that there are known cases in which people in irregular immigration situations who are victims of slavery, have been detained and processed through general police entities and consequently deported to their countries of origin. In these cases the state decision to deport causes these individuals to become even more vulnerable, and they frequently become victims of slavery networks again in the future and reenter Ecuador to be exploited.
- On the other hand, there are also some difficulties once the State has provided protection to foreigners who were victims of slavery in Ecuador. There is no protocol or institutionalized process to return these victims to their countries of origin and it should be noted that in these cases the State must determine whether returning them is safe and can be done with dignity. It would make no sense if, upon returning, the victim and his/her family would once again become vulnerable and at risk for being enslaved again.
- In most of the cases assisted there is evidence, primarily gathered through implementation of the Plan, that there is more concern for investigation and legal processing of perpetrators than there is for protecting the victims rescued.
People who assist victims of slavery, including public servants, have been subjected to aggression, threats and intimidation and have not received adequate protection from the State.\(^8\)

**Recommendations**

- The Plan’s Technical Secretary should design continuous training modules for public employees, particularly for the national police, judges and criminal courts, investigating agents, labor inspectors, teachers, health professionals at the national level, and representatives and employees of Ecuadorian embassies and consulates.

- The Plan’s Technical Secretary should implement an integral protection system for victims of slavery, independent of victim participation in the penal process, with national coverage that includes: specialized interdisciplinary personnel for midterm and immediate assistance, public defense, coverage for medical emergencies, and security and protection of privacy.

- The Plan’s Technical Secretary should carry out investigations that determine the structural causes of vulnerability among certain populations who are then exposed to becoming victims of slavery networks, in order to implement timely and adequate prevention programs that will have a positive impact on the community.

- The Ecuadorian government should assign an annual budget that is sufficient to implement the 3 axes stipulated in the Plan.

- The State’s Office of the General Investigator should create specialized units for slavery at the national level, taking into account that although sexual exploitation is one of the objectives and is very common, there are other objectives that are becoming invisible.

- The National Police should create an office specialized in investigating slavery, as its victims are not exclusively children and adolescents. In addition, it should have trained personnel, adequate resources, and the latest technology to allow it to support investigations and persecution of those responsible for this crime at the national and international levels, including support from INTERPOL and police entities in other countries.

- The judicial function should be integrated within the National Plan in order to combat slavery. In addition, continuous training processes should be implemented for criminal court judges and members of the criminal courts.

- The MIES should generate a strategy for restitution of victims’ rights and the generation of new life projects, taking into account the physical, psychological

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\(^8\) Reference from the Red Antitrata (Anti-Slavery Network): La Luna case, acquittal of those implicated and death threats to 3 members of the Anti trafficking Network (Red Antitrata) in January 2010.
and social consequences victims of slavery suffer.

- The Ministry of Education should follow-up on the implementation of Agreement 482 and train its employees to respond to this commitment.

- The Plan’s organizations should generate clear protocols for the process to be used when assisting victims, taking into account specifics such as age, gender, place of origin, and the reason for which they were subjected to exploitation.

- The shelters or safe houses should not only have the necessary conditions for habitation. There should also be timely and sufficient resources, and an integral and multidisciplinary work team that can attend to the needs of slavery victims, be they men, women, children, adolescents, foreigners or nationals, afro-descendents, indigenous peoples, elderly, or people with disabilities, among others. Furthermore, this should be coordinated according to the objective for which they were enslaved. This is not being done now and, therefore, the State cannot provide the protection it has committed to providing in various international agreements.