



# 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

### List of issues in relation to the third periodic report of Colombia\*

#### I. General information

1. Please provide information on the steps taken to develop a comprehensive regulatory framework that is in accordance with the provisions of the Convention and other applicable international instruments, as recommended by the Committee (see CMW/C/COL/CO/2, para. 9). Please also provide information on the specific, measurable and time-bound goals and targets set for the implementation of migrant workers' rights and on the arrangements made for monitoring progress and achievements in relation to them.
2. In accordance with the comprehensive migration policy (CONPES 3603), please provide information on the measures taken to ensure that the Convention is fully reflected in the legislation of all administrative divisions. Please also provide information on institutional coordination for the purpose of ensuring that all migrant workers and their families enjoy the rights set out in the Convention. Please include information on subnational and municipal policies and practices in the areas of migration, labour, child protection, measures to counter trafficking in persons and smuggling of migrants, access to justice and any other policies and practices that may have an impact on the rights of migrant workers and their families. Please include details on the corresponding budgetary allocations and on the coordination, monitoring and evaluation procedures in place in this regard.
3. In the light of the 2016 peace agreement, please indicate whether steps have been taken to strengthen the authority of the Office of the Ombudsperson to investigate serious violations of the human rights of migrants and their families. Please describe the nature and scope of the role of the Office of the Specialized Ombudsperson for Criminal Justice and Prison Policy in closing migrant detention centres and reporting problems discovered in those that are still in operation.
4. In the light of recent migration flows from the Bolivarian Republic of Venezuela, please provide information on the census of Venezuelan migrants and the mobility card programme, and on the guarantees and services to which this programme affords access in the framework of the Convention. Please report specifically on the implementation of each of the recommendations made by the Committee in 2013, indicating what policy improvements have been made, how effectively they have been implemented and what impact they have had on the rights of migrants. The Committee would also appreciate receiving official figures on the results of those efforts and/or any studies conducted to

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\* Adopted by the Committee at its twenty-ninth session (3 to 12 September 2018)



measure the changes and progress achieved with respect to the recommendations made to the State party.

5. Please indicate what measures have been taken to improve the collection of data on migration flows and other statistics relating to Colombian migrants abroad and foreigners in Colombian territory, taking into account all aspects of the Convention. Please also indicate whether arrangements have been made for enabling human rights institutions to access such data and for presenting regularly compiled statistics for use in assessing advances or setbacks with regard to public policies on migration issues, with the participation of public agencies, civil society, non-governmental organizations and institutions within the justice system.

6. Please provide information on the steps taken to withdraw the State party's reservations to articles 15, 46 and 47 of the Convention (see CMW/C/COL/CO/2, para. 11).

## **II. Information relating to the articles of the Convention**

### **A. General principles**

7. Please provide examples of cases in which the Convention has been applied by national courts, administrative authorities and/or consular offices, indicating in particular:

(a) The judicial bodies and/or administrative structures authorized to examine complaints from migrant workers or members of their families, including those who are undocumented or in an irregular situation, who believe that their rights have been violated;

(b) The number and type of complaints examined by those bodies since 2013, and the decisions taken;

(c) The legal assistance provided to migrant workers in a regular or an irregular situation, including Colombian nationals abroad, and the measures taken to inform them and members of their families about the remedies available to them for violations of their rights;

(d) The comprehensive reparation awarded to victims of such violations, including in the form of compensation, and in the case of Colombian migrants, the efforts made to obtain such reparations from other States.

### **B. Part II of the Convention**

8. Please explain how the State party ensures the exercise, without distinction of any kind, of the rights protected by the Convention and indicate whether the State party's laws cover all the prohibited grounds for discrimination enumerated in the Convention and in other international treaties. Please describe the concrete steps taken to guarantee non-discrimination, in practice, to all migrant workers and members of their families with regard to the rights provided for in the Convention.

9. Please include information on any education, training or awareness-raising programmes that have been adopted to combat stereotypes, xenophobia and discrimination against migrant workers and to highlight the issue of migrant rights among the media and political actors, to ensure that public messages, statements, speeches and the like do not encourage discrimination or xenophobia.

10. Please indicate whether the State party has taken steps to ratify the International Labour Organization (ILO) Migration for Employment Convention (Revised), 1949 (No. 97) and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), as recommended by the Committee (see CMW/C/COL/CO/2, para. 15).

## C. Part III of the Convention

### Articles 8 to 22

11. Please describe the labour inspection programmes that are in place, the agency responsible for their implementation and the mechanisms that have been established to process complaints in this regard without irregular migration status being an obstacle or barrier that discourages migrants from filing complaints or claims. Please provide official statistics on these matters and compare the number of complaints that have been received with the number of cases that have been resolved. Please indicate whether there are any bilateral agreements for the migration of Colombian workers and whether they are consistent with the principles laid down in the Convention.

12. Please describe the specific measures that are in place to protect Colombian and other women migrants in transit from any type of crime and, in particular, from various forms of violence and sexual abuse, and to provide reparation for those who become victims of crime. Please add information on the results, challenges and successes of these measures, using quantitative and qualitative data.

13. Please provide information on the measures taken to ensure that persons against whom expulsion or deportation procedures have been initiated enjoy the right to a defence and due process. Please indicate what steps have been taken to ensure that migrant workers have a simplified, efficient record of entries and exits and, when they are unable to provide proof of lawful entry, that they are given the option, and sufficient time, to regularize their stay or to apply for temporary or permanent residence, and that all relevant circumstances are taken into consideration. Please also explain how the rights of children and the inclusion of a gender perspective are guaranteed under these procedures.

14. Please indicate how many humanitarian visas have been granted since 2013. In particular, please indicate how many permits have been issued to unaccompanied children, who should be given humanitarian visas when doing so is in the best interests of the child. In addition, please indicate whether steps have been taken to ensure that the staff of Migration Colombia and other agencies systematically inform all migrants, in particular unaccompanied children (who require a guardian), that they have the right to apply for a humanitarian visa.

15. Please provide detailed information on the action taken to investigate complaints of harassment, corruption or abuse of authority. Please include information on the number of complaints that have been received and investigated in the last five years and on the steps taken to investigate, prosecute and convict the officers responsible; please specify the nature of the charges brought and the sentences imposed.

16. Please provide information on cases in which Colombians have been expelled from Venezuelan territory and deprived of their property, including information on the situation of that property, and on cases in which those who are still resident in that country have been prevented from entering Colombia and returning to their homes as a result of the closure of the northern border. Please indicate the support provided by the State party to persons in these situations, the actions taken to protect the rights of Colombian migrant workers and the reparation sought from the party responsible for the harm suffered.

17. Please provide information on the temporary migrant holding facilities, indicating whether they exist at the subnational level and describing the conditions of accommodation of detained migrants and asylum seekers. Please indicate what alternative measures have been established and implemented in order to ensure that, when necessary, children and families are housed in open centres as a means of protecting their rights. Please provide statistics on all alternative measures applied since 2013. Please provide information on the child welfare agencies that oversee these facilities and procedures and on the budgetary and other resources provided for them at the federal, provincial and municipal levels. Please indicate whether the objective of protecting children's rights is considered to take priority over the objectives of the immigration control policy. In addition, please provide information on the implementation of the handbook on immigration control in respect of children and adolescents. Please indicate what steps have been taken to guarantee the right

of all unaccompanied children to a guardian, the right to legal assistance, the right to be heard and the right to other guarantees of due process, including access to justice, during procedures to determine what action would be in the child's best interests, if migration or other procedures might have an impact on the child's rights.

18. In the light of article 16 of the Convention and the Committee's joint general comments with the Committee on the Rights of the Child No. 3 (2017), on the general principles regarding the human rights of children in the context of international migration, and No. 4 (2017), regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return:

(a) Please provide information on the means used to uphold the principle of exceptionality in relation to immigration detention, whether of adults or of children, and to ensure that such detention is used only as a measure of last resort;

(b) Please explain what factors would warrant the use of that exceptional measure and indicate what administrative or judicial authority is competent to order it, what safeguards are in place to ensure that any such decision is duly founded and how due process and the right to an effective remedy are ensured;

(c) Please indicate whether specific protocols or procedures are in place for the identification of persons in special situations of vulnerability (such as asylum seekers, pregnant or breastfeeding women, victims of human trafficking or domestic violence, members of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community, children and adolescents) and for ensuring that they are not held in detention and receive proper care;

(d) Please provide qualitative and quantitative information on the alternative non-custodial measures that are used, disaggregated by month/year of application, sex and nationality of the person involved and the type of measure applied;

(e) Please describe the measures and protocols that are in place to ensure that the national human rights institution (Ombudsperson), organizations that promote and defend the rights of migrants and asylum seekers, and civil society in general have access to places of detention;

(f) Please report on the situation of the 59 Colombians who have been detained/retained without justification in the Bolivarian Republic of Venezuela on account of their immigration status and allegations linking them to internal security issues. Please include information on due process guarantees in the host State and on the actions taken by the State party to ensure respect for those rights.

19. Please describe the specific measures that are in place to ensure that women migrants in the State party and those in transit through its territory are protected from all types of crime, particularly all forms of violence and sexual abuse, and to provide victims with reparation. Please provide quantitative and qualitative data on the results obtained, the challenges encountered and the successes achieved by these measures, particularly in relation to reported cases of trafficking for purposes of sexual exploitation and smuggling of migrant women and girls to this end.

20. Please provide information on the measures taken by the State party to ensure respect for the rights of migrant children and to protect such children from any type of violence or exploitation, particularly with regard to migrant children in the State party or in transit through its territory who are unaccompanied or in an irregular situation, including the allocation of sufficient resources for the effective enforcement of laws for the protection of children from trafficking. Please provide information on the measures taken to protect children from all forms of child labour, including through the implementation of the ILO Worst Forms of Child Labour Convention, 1999 (No. 182), and the strengthening of the labour inspection system, particularly in the light of cases in which indigenous child migrants who are trafficking victims have been forced to work on the streets of cities such as Bogotá and Medellín.

**Article 23**

21. Please describe in detail the policies and measures adopted to provide consular protection to migrant workers and their families abroad, including those in an irregular situation, in particular with regard to:

(a) The provision of free legal assistance in cases involving detention or expulsion;

(b) Family reunification procedures whereby migrants' children or parents, as applicable, can be reunited with them in the country concerned;

(c) Measures to prevent parents and children from being separated as a result of an expulsion order issued by the country of destination

(d) Measures to ensure that unaccompanied children or children accompanied by their mothers are not detained in the country of destination by reason of their immigration status;

(e) Measures to provide identity documents, travel documents and birth certificates to the children of Colombians abroad, regardless of whether their birth registration was timely or late, so that they can maintain Colombian nationality.

22. With reference to Act No. 1448 of 2011 laying down measures for the provision of support, assistance and comprehensive redress to victims of the internal armed conflict and incorporating other provisions, please provide information on the Central Register of Victims and on how individuals can avail themselves of comprehensive redress procedures.

**Articles 25 to 30**

23. Please provide information on the steps taken to ensure the enjoyment, in practice, of the right to equal treatment for migrant workers and members of their families, in particular women migrant workers, and to monitor their working conditions effectively. Please also indicate what mechanisms of legal and labour protection are in place to ensure that migrant workers enjoy treatment not less favourable than that which applies to nationals in respect of remuneration and conditions of work. Please describe the working conditions of migrants in border areas and the legislation, oversight mechanisms and programmes in place to address this particular issue. Please include information on the steps taken to promote the rights of Colombian migrant workers abroad, including information on the cases of migrant sex workers, seasonal workers and maritime workers.

24. Please provide information on the national policies in place to ensure that migrant workers and members of their families have the same access to emergency health care as Colombian nationals.

25. Please describe the policies and programmes that have facilitated the entry of students from migrant families into the education system. Please provide information on the progress made in streamlining requirements and expediting procedures for accepting minors in educational establishments and on the agreements that have been reached for recognizing and crediting advanced and technical studies in a prompt and timely manner as a means of promoting the employment and social integration of migrants.

26. In line with general comment No. 1 (2011) on migrant domestic workers, and in the light of regional commitments regarding labour inspections, please provide detailed information on the situation of women migrant workers in domestic service, specifying what measures have been adopted to investigate and punish those responsible for abuses against them, to inform them of available mechanisms for lodging complaints against their employers and to facilitate the regularization of their immigration status.

27. Please provide information that demonstrates that migrant workers and their families have effective access to the social security system and all social security benefits, without differentiation or discrimination with respect to Colombian nationals. In particular, please provide information on the second phase of implementation of the special stay permit and indicate what impact it has had on the situation of Venezuelan migrants. Please also report on the pension/retirement options available to Colombians once they have returned home.

**Article 33**

28. Please describe the communication channels and institutions responsible for disseminating information among migrant workers and members of their families about migrants' rights under the Convention and, in particular, the rights established in the Constitution and laws of Colombia for their protection. In addition, please explain how migrant workers can obtain timely information about their rights and their options in relation to immigration decisions, in particular with regard to defence and appeal.

29. Please provide information on the conditions of detention, trial and punishment of migrants accused of committing offences or crimes while employed in fishing activities in international waters. Please indicate how due process has been ensured and how the conditions set forth in the Convention have been met for this group of workers in particular, including the restitution of their property and whether there have been any cases in which the need for redress has arisen.

**D. Part IV of the Convention****Article 44**

30. Please provide information on measures taken to protect the unity of the families of migrant workers and to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children. Please indicate how many migrant workers submitted requests to the State party for reunification with their spouses, minor children or other family members during the reporting period and how many such requests were granted. If possible, please cite cases of Colombian migrants who have been forcibly separated from their families in the United States of America and other countries that have forcibly expelled migrants.

**E. Part VI of the Convention****Article 64**

31. Please provide information on the steps taken, such as consultation and cooperation with other States, to promote sound, equitable and humane conditions in connection with the international migration of migrant workers and their families by means of bilateral and multilateral agreements, including policies and programmes, especially the Residency Agreement for Nationals of States parties to the Southern Common Market (MERCOSUR), Bolivia and Chile and the agreements concluded with Costa Rica, Ecuador, Spain and Panama. In addition, please provide information on the protocol on the expulsion of third-country nationals that was concluded in 2016 with Ecuador. Please describe how these agreements protect rights and afford guarantees during detention, repatriation and expulsion procedures and in the readmission and reintegration of expelled persons in their country of origin, and how they facilitate and guarantee the right to family reunification in both countries of origin and countries of transit or destination.

32. Please explain how cases of human rights violations and the disappearance of migrants in transit and the search for and identification of victims of these and other offences are addressed and how victims and their families are ensured effective access to justice and reparation in the country in which they find themselves.

**Article 67**

33. Please provide information on cooperation programmes that are in place between the State party and States of employment for the voluntary return to Colombia of migrant workers and members of their families when they decide to return or when they are in the State of employment in an irregular situation. Please include relevant data and statistics. Please provide information on measures adopted to implement Act No. 1565 of 2012, which contains provisions on, and establishes incentives for, the return of Colombians resident abroad, at the national and subnational and municipal levels, to facilitate the return

of Colombian workers and members of their families and to assist them in their resettlement and reintegration into the economic and social life of the State party.

34. Please provide disaggregated statistical information on the number and percentage of returnees who obtain family allowance funds, exemption from taxation (see CMW/C/COL/3, para. 41), employment programmes and vocational training, health cards and access to health insurance and social security. Please also provide detailed information on measures adopted to ensure that repatriated children's vaccinations are updated in accordance with the national immunization schedule and that this is reflected in national health registers.

#### **Article 68**

35. Please provide disaggregated data on the number of cases of human trafficking recorded in the last seven years and indicate whether the decisions of judicial and human rights institutions had a positive impact on persons over 18 who purportedly "accepted" the conditions laid down by traffickers. Please provide information on the mandate and powers of the Observatory for the Offence of Trafficking in Persons, established in 2016, and explain how it exercises its functions, including the investigation, prosecution and trial of human traffickers. Please also provide detailed information on the National Strategy to Combat Trafficking in Persons 2016–2018 and on the establishment of shelters for girls, adolescents, young persons and women who are victims of trafficking.

#### **Article 69**

36. Please describe what progress has been made with respect to granting visas, work permits or residence permits to self-employed migrant workers to place them on an equal footing with other migrant workers, in accordance with article 2 (2) (h) of the Convention, in order to enable self-employed migrants from non-MERCOSUR countries to gain access to regularization procedures. Please also provide information on positive experiences and models of support for the regularization of Colombian migrant workers and members of their families abroad.

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