



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

Distr.: General
7 September 2017

Original: English

**Committee on the Protection of the Rights of All
Migrant Workers and Members of Their Families**
Twenty-seventh session

Summary record of the 361st meeting

Held at the Palais Wilson, Geneva, on Monday, 4 September 2017, at 3.15 p.m.

Chair: Mr. Brillantes

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The meeting was called to order at 3.20 p.m.

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

Third periodic report of Ecuador (CMW/C/ECU/3; CMW/C/ECU/QPR/3)

1. *At the invitation of the Chair, the delegation of Ecuador took places at the Committee table.*
2. **Mr. Jácome** (Ecuador), introducing the third periodic report of Ecuador (CMW/C/ECU/3), said that Ecuador was a country of origin, transit, destination, return and refuge and had therefore established a legal and institutional framework that protected the rights of persons in all situations of human mobility. The Government of Ecuador had signed and ratified all the international treaties on human rights and had adapted its domestic legislation to international human rights law. As a result, it had one of the world's most advanced bodies of legislation on human mobility.
3. The Organic Act on Human Mobility, which had been adopted in February 2017, and its implementing regulations not only enhanced recognition of the human rights of migrants, but also harmonized and consolidated the separate pieces of legislation on migration that had been in force for over 40 years. The Act aimed to give effect to the constitutional principle of equality between Ecuadorian and foreign nationals. It recognized the right to migrate and did not define human beings as illegal because they were migrants.
4. The Act had been drawn up in consultation with various sectors of civil society, public institutions and international organizations specializing in the area of migration. It regulated the exercise of rights and duties and outlined the institutions and mechanisms for dealing with migrants, including immigrants, emigrants, returned Ecuadorian nationals, persons in need of international protection and victims of trafficking in persons and their families.
5. Current legislation guaranteed individuals' freedom of movement and the portability of their rights, and promoted the progressive extinction of the status of foreign national and the right of families to choose their place of residence, whether temporary or permanent. Under the Act, it would be possible to apply in practice a number of principles that were enshrined in the Constitution, such as the protection of refugees in Ecuador and the guarantee of their right to work and to receive social security benefits. Refugees in Ecuador were entitled to choose their place of residence and to benefit from public policies that provided comprehensive support and protection.
6. The Government of Ecuador had taken steps to give Ecuadorian nationals living abroad access to a growing number of State programmes and services. Nationals who returned to Ecuador were reintegrated through a cross-cutting approach adopted in accordance with the Organic Act on Human Mobility. The Act also set out an administrative procedure that enabled foreign nationals to regularize their status. Ecuadorian nationals living abroad, and foreign nationals who had lived in Ecuador for more than five years, had the right to vote and to stand for election.
7. Campaigns to prevent risky migration and to combat racism and xenophobia had been run in primary and secondary schools. Those efforts had been bolstered by regulations aimed at preventing and eliminating the spread of negative stereotypes about migrant workers. As a result of a project run by the Ministry of Foreign Affairs and Human Mobility in collaboration with the Ministry of Education, the Ministry of the Interior and other national and international bodies, information on human mobility would be included in the curriculum for the current school year and relevant educational material would be created for parents, teachers and students. The first phase of the project would cover some 218,000 students at high risk of migration.
8. **Mr. de la Vega** (Ecuador) said that the Government of Ecuador had introduced the concept of comprehensive security, which, in contrast to traditional concepts of security, was centred on the person and the protection of his or her rights and dignity. In accordance with that approach, which was enshrined in the Constitution and the laws of Ecuador,

human mobility was regarded as a right and the State had an obligation to protect and support migrants and ensure that they were fully integrated into society.

9. Under the guiding principle of freedom of human mobility, the Government had established minimal requirements for the entry of any individual into Ecuador. Even individuals who did not meet one of those requirements had the right to challenge the decision to deny entry, under a procedure in which due process was guaranteed and public defence services were made available.

10. The deportation of migrants in an irregular situation was governed by the legislation in force, which focused on the protection of human rights. Due process was guaranteed in all proceedings, no mechanisms existed for depriving such migrants of their liberty and persons who had not regularized their immigration status within the time established by law were able to leave the country voluntarily.

11. The eradication of the crime of trafficking in persons was mandated by the Constitution and provided for in the Organic Act on Human Mobility and in criminal law. In order to combat that crime, address all its causes and create policies to protect and restore the rights of victims, an Inter-Agency Commission had been set up to coordinate the actions of various institutions. That strategy ensured that appropriate measures were taken urgently and that the gender and generational perspectives were taken into account.

12. As noted in the report, the National Plan to combat trafficking, sexual and labour exploitation and other forms of exploitation, especially of women, children, adolescents and persons with different sexual identities, had been drafted with the aim of protecting victims, providing them with reparation, preventing the offences in question and investigating and punishing offenders. In order to achieve those goals, specialized units had been set up through the Ministry of the Interior and the National Police, and standard operating procedures had been drawn up.

13. Embassies and consulates around the world provided Ecuadorian victims of trafficking and exploitation with food, housing and airline tickets. Furthermore, services funded by the State and by civil society ensured that such victims were protected from harm or threats during court proceedings and had access to psychological help, health care, education and accommodation. Agreements had been drawn up with Peru and Colombia to promote the detection of trafficking in persons and to provide support to victims.

14. **Mr. Jácome** (Ecuador) said that the Government would take steps to establish public policies, training programmes and monitoring mechanisms to ensure the implementation of legislation in the area of human mobility and to promote the necessary change of culture in that regard. The provisions of the Convention would be reflected in secondary legislation and in the programmes and policies of public institutions. In collaboration with the decentralized autonomous governments and the International Organization for Migration (IOM), a project was being implemented to mainstream the human mobility perspective in national development policies.

15. With the assistance of IOM, the Government would also continue developing the National System of Information on Migration, which would link up the various information systems used by national institutions working in that area.

16. The Government was committed to participating in the drafting of the global compact for safe, orderly and regular migration and the global compact on refugees, both of which should be binding on all countries. To facilitate universal adherence to those two instruments, the Government called on all States that had not yet done so to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

17. **Mr. Ceriani Cernadas** (Country Rapporteur), commending the State party on its adoption of the Organic Act on Human Mobility, said that he wished to know what mechanisms, resources, tools, protocols and budget were being planned, or had been established, to guarantee the implementation of that Act and the relevant regulations.

18. The National Council on Equality in Human Mobility was responsible for coordinating and mainstreaming public policy on human mobility. In the light of the

difficulties that the Council had reportedly faced, and the fact that representatives of civil society had only recently been included among its members, he asked to what extent it had been able to achieve its goals. Noting that the Council was not given any specific mandate in the Organic Act on Human Mobility, he asked how the State party would be able to ensure that public policy on human mobility, particularly in relation to internal matters such as labour law and access to employment and education, was mainstreamed across the various ministries.

19. Commending the State party on the closure of its detention centres for migrants, he asked for information on any reparation provided to persons who had been held in those centres, either on grounds of the conditions in which they had been held or on grounds of the proceedings that had led to their detention.

20. In view of the recent adoption of the Organic Act on Human Mobility, he wished to know what the legal basis was for the temporary detention of persons who attempted to enter Ecuador unlawfully through Quito International Airport, whether any protocol was in place concerning the situation of such persons and the conditions in which they were held, whether such persons were protected by the national mechanism for the prevention of torture, whether their consular representatives were informed of their detention and how responsibility for dealing with such persons was determined. Did private entities, such as airline companies, play a role in the detention of migrants at the airport?

21. He wondered whether the Brazilian-French journalist Manuela Picq, who was the partner of an Ecuadorian representative of an indigenous group and had been deported from Ecuador, would be able to return to the country, particularly as she was a citizen of a State party to the treaty establishing the Southern Common Market (MERCOSUR), of which Ecuador was an associated State. He also wished to know whether Ecuador had any legal provisions specifically justifying the future denial of visas to persons who had previously been deported.

22. The Committee had received information that the Cuban citizens who had been detained and sent back to Cuba in 2016 had been deported before they had been able to make use of all available administrative and judicial remedies. Had the State party conducted an exhaustive and impartial investigation of the circumstances of the deportations? Had it uncovered any abusive practices, and if so, had it taken any measures to provide reparation to the persons who had been detained and expelled? While the Organic Act on Human Mobility emphasized the right of all persons to due process and access to justice, it provided only for administrative means of appeal against expulsion decisions, not for any judicial remedies or right of appeal before a court. The delegation should inform the Committee whether such rights were protected under other laws. Annex 4 to the State party's report gave information on the number of persons, disaggregated by nationality, who had been deported between 2011 and 2016. It would be of interest to the Committee to receive data disaggregated also by gender, family situation and reason for deportation.

23. Legal aid was reportedly provided to migrant workers and their families through the public defender system. Noting that such systems were generally oriented towards proceedings in the criminal justice system, he asked whether the State party had taken any steps to ensure that persons covered by the Convention were entitled to receive legal assistance related specifically to migration issues. Had the public defender system been provided with the specialists, resources and specific tools that it required to carry out that task?

24. Under the Organic Act on Human Mobility, undocumented migrants were given 30 days in which to regularize their status; however, the Act also provided that undocumented persons could be fined or deported if they did not regularize their situation. The period of 30 days was insufficient, as such persons often must overcome numerous administrative hurdles such as the collection of information and documentation, sometimes from their home countries. How was the 30-day period counted and applied in practice? One of the requirements for obtaining a residence permit was the production of proof that applicants could provide for themselves, but migrant workers often worked in the informal economy and lacked proof of employment in the form of contracts or documents. He wished to know

how the State party ensured that such a lack of documentation did not prevent the regularization of migrants' status, and also how the State party determined whether an applicant for regularization presented a national security risk.

25. **Ms. Castellanos Delgado** said that some migrants from her own country, Honduras, disappeared en route to their countries of destination. Others were returned to Honduras against their will. Young migrants who were forcibly returned suffered psychological trauma, and migrants who disappeared left behind families who were deeply distressed and plagued by uncertainty. The delegation should provide statistics on Ecuadorian migrants who died or disappeared and also on those who were forced to return to Ecuador, and it should describe the State party's efforts to assist returnees with psychological support and reintegration services. Was any support provided to the families of migrants who disappeared outside Ecuador? Had the State party entered into any bilateral agreements to help shed light on the fate of such migrants?

26. **Ms. Dzumhur** said that, given the importance of ensuring the effective implementation of the complaints procedure established under articles 76 and 77 of the Convention, she would like clarification of whether the Government intended to declare that it recognized the Committee's competence to receive communications.

27. In the light of the fact that Ecuador was a State of origin, employment and transit, she asked whether it had adopted a comprehensive policy to manage migration flows. Was there a single institution responsible for the collection of data on migrant workers? To what extent was the national human rights institution involved in monitoring the situation of migrant workers and migration issues and in protecting migrants? She would welcome further information on the kinds of human rights training and information provided to public servants, police officers and others who had contact with migrants. She wondered whether the Government had established cooperation mechanisms with civil society organizations active in the field of migration and whether it had involved them in implementing the Organic Act on Human Mobility. She also wished to know whether Ecuadorian consular representatives in other countries provided consular assistance to migrant workers and, if so, whether they made such assistance available to all Ecuadorian migrant workers without distinction, and what protocols they used. Lastly, she asked why the Organic Act on Human Mobility obliged foreign migrant workers to obtain health insurance, given that Ecuadorian workers were under no such obligation. Was it true that undocumented migrants were given access only to emergency health care? What happened when they required maternal health services or preventive care?

28. **Mr. Núñez-Melgar Maguiña** said that he would like to know what percentage of Ecuadorian migrant workers returned to Ecuador, what government programmes were in place to facilitate their reintegration into Ecuadorian society and what economic and social challenges they faced. The Committee had been informed that the amount of remittances from Ecuadorian migrant workers had fallen, but it lacked specific data on the amounts involved. Noting that a number of Ecuadorians had been forced to leave the country owing to economic crises at home, he asked whether the Government had implemented any programmes to provide them with training before they set out to countries of employment. The delegation should provide further information on the bilateral agreement with Peru that regulated migration, on emergency consular assistance in the event of the death of Ecuadorians in other countries and on efforts to secure social security coverage for Ecuadorian nationals, for example in the framework of MERCOSUR.

29. **Ms. Dicko** said that it would be useful for the Committee to hear how the policies, plans of action and strategies for the implementation of the Convention were defined and whether the State party had a recruitment policy for Ecuadorian migrants who wished to go to other countries for work. She asked what protection mechanisms were in place for foreign migrant workers in Ecuador and their children, and what systems had been established to assist Ecuadorian migrant workers in transferring remittances back home. She wondered whether foreign-born children of Ecuadorian migrant workers had the same rights as Ecuadorians born within the country and whether such children received assistance with reintegration upon their return to Ecuador. Did Ecuadorians who had been expelled from other countries receive any support upon their return? The delegation should inform the Committee whether the country's employment policy was designed to encourage

Ecuadorians to migrate from Ecuador to other countries of employment or to discourage them from doing so, and whether that policy was aimed at strengthening employment opportunities in Ecuador.

30. **Mr. El Jamri** said that the delegation should inform the Committee to what extent civil society organizations had taken part in the drafting of the State party's report. He also asked how many children of migrant workers were in detention in Ecuador. The delegation should provide information on their conditions of detention and should specify whether they were separated from their parents. During the consideration of the State party's previous report, it had been noted that many Ecuadorian migrant workers had been forced to return home owing to the economic crisis in southern Europe. How had the country dealt with the influx of returning migrant workers? Had the Government established any programmes to assist them? The Committee had been informed of various initiatives to modify the Organic Act on Human Mobility. The delegation should explain how civil society and the national human rights institution were involved in those efforts.

31. **Mr. Tall** said that he had read with interest the parts of the Ecuadorian Constitution that supported the principles of universal citizenship and free movement of all people. How did the Government view the situation of migrants in irregular situations in the light of such principles? What was done to regularize their status and facilitate their integration in the country? He would also like to know whether undocumented migrants were given the opportunity to obtain identity documents for their children and whether such children were allowed to attend school and had access to health care. The delegation should provide the Committee with statistics on the enrolment rates of such children. The Committee had heard that Haitian migrants were often subjected to discrimination. What measures were being taken to protect them?

32. **The Chair** said that the Committee had received reports of "anti-Colombianism" in Ecuador. He asked the delegation to comment on the rise of anti-Colombian sentiment, its reasons and manifestations, and its effect on the approximately 60,000 Colombians in the country. Was it true that the Organic Act on Human Mobility applied only to documented migrants, and if so, why?

The meeting was suspended at 4.30 p.m. and resumed at 4.55 p.m.

33. **Mr. Jácome** (Ecuador) said that public sector bodies were undergoing a process of adaptation to the new legislative framework created by the Organic Act on Human Mobility. Pursuant to article 167 of the Act, all public sector bodies were required to mainstream a human mobility perspective in their work. In addition, article 165 of the Act established that decentralized autonomous governments had the power to pass legislation to facilitate the integration of migrants and ensure respect for their human rights.

34. Since late 2016, the Government had been working with IOM, under an agreement between that organization, the Ministry of Foreign Affairs and Human Mobility and the National Council on Equality in Human Mobility, with a view to meeting the challenges in that regard. Key issues relating to human mobility had been discussed extensively; following consultations with relevant stakeholders, a national plan was being developed in which the future priorities of the Ministry of Foreign Affairs and Human Mobility would be identified.

35. With regard to resources, it should be noted that the Office of the Deputy Minister for Human Mobility had an average annual budget of US\$ 400,000 to support migrants. The Ministry of Foreign Affairs and Human Mobility had set up a directorate with eight regional branches to facilitate the integration of migrants. There was a wide range of programmes to support returning migrants, as noted in the State party's report, and the Secretariat for Higher Education, Science, Technology and Innovation accredited relevant professional and academic qualifications obtained abroad by migrants. Moreover, the Government worked with a large number of civil society organizations that represented the interests of migrants. Activities had been conducted in many secondary education institutions under the National Campaign to Prevent Xenophobia and Discrimination, and an institutional mechanism was being developed to raise awareness among Ecuadorian students of the risks associated with certain forms of migration, with a view to enabling them to make informed decisions about their future.

36. The Government had conducted various activities to provide legal assistance to Ecuadorian migrant workers abroad, including Ecuadorians affected by the mortgage crisis in Spain and Ecuadorian minors in Italy who had been removed from their families by the Italian social services. In the light of the migration policies adopted by the new administration of the United States of America, a plan was being developed to provide consular assistance to Ecuadorian nationals in that country, facilitate cooperation with the consulates of other States whose citizens had been affected and support Ecuadorian migrant workers who had been deported. Moreover, consular information systems had been improved, and 22 mobile consulates operated in the United States to provide legal assistance and social and psychological support to Ecuadorian nationals. In addition, a consular agency had been set up in Tapachula, Mexico, to support Ecuadorians in the region.

37. **Mr. de la Vega** (Ecuador) said that, under the Organic Act on Human Mobility, the Ministry of Foreign Affairs and Human Mobility had overall responsibility for human mobility, while the Ministry of the Interior had responsibility for migration control and public policy pertaining to trafficking in persons. Following a recent restructuring process, the Ministry of the Interior now included a high-level office responsible for issues relating to human mobility, as well as a permanent directorate for combating trafficking in persons. Moreover, a dedicated anti-trafficking unit had been set up within the National Police.

38. Significant progress had been made in preventing the detention of migrants. There were no longer any detention centres for migrants in Ecuador, as human mobility was not criminalized. However, there were grounds on which entry to Ecuador could be denied; since February 2017, migrants who had been denied entry were granted a hearing. All such hearings were brought to the attention of the human mobility authorities, and potential migrants could request legal assistance from the Ombudsman.

39. Expulsion proceedings against Manuela Picq had been suspended and she had subsequently left Ecuador voluntarily. Ms. Picq's visa application had been denied, but nothing prevented her from returning to the country in the future. With regard to the detention and expulsion of Cuban citizens in 2016, no children had been detained and vulnerable persons, including pregnant women, had been transferred to shelters. The decision had been taken to expel 149 Cuban citizens, the majority of whom had been in an irregular situation in Ecuador and had attempted to obtain a visa in order to travel to Mexico and enter the United States unlawfully. However, hundreds of thousands of Cuban migrants in a regular situation lived in Ecuador, and the new legislative framework did not permit the preventive detention of migrants in an irregular situation.

40. Under the Organic Act on Human Mobility, foreign nationals who had served a custodial sentence of a certain minimum length could be expelled from Ecuador as part of their sentence; the expulsion order was issued by the sentencing judge. Citizens of only 11 States required visas to enter Ecuador, but all foreign nationals were required to respect the migration procedures established by law. The grounds on which individuals had been deported included failure to comply with immigration procedures (in 35 per cent of deportation cases), failure to regularize immigration status within the prescribed time frame (in 55 per cent of cases) and expulsion following a prison sentence (in 5 per cent of cases).

41. With regard to the procedure for determining whether a particular individual represented a threat to the State, it should be recalled that, in Ecuador, the security of the State and the security of human beings were deemed to be interconnected. Individuals who committed certain transnational crimes, such as trafficking in persons, were considered to represent a threat to human beings.

42. Ecuador had signed bilateral agreements with neighbouring countries on the prevention of human trafficking. The National Police cooperated closely with police in those countries in order to identify and assist victims of trafficking. Consulates and embassies supported victims by providing temporary accommodation and helping them return safely to their country of origin.

43. All persons who contacted the Ecuadorian emergency services received immediate care and attention, regardless of their immigration status and nationality. Those services

also assisted with the rescue of vulnerable Ecuadorians abroad, through close cooperation with the emergency services of other countries in the region.

44. Migrant children and adolescents in an irregular situation were never detained; they received special assistance in shelters provided by the Ministry of Economic and Social Inclusion.

45. **Mr. Espín Arias** (Ecuador) said that the administrative procedures applicable to migrants had been established in accordance with the Constitution and the jurisprudence of the Inter-American Court of Human Rights, and were subject to the rules of due process. Decisions relating to migration were administrative and were subject to administrative appeal, but they could also be challenged in court. The Organic Act on Human Mobility offered greater protection to migrants by enabling them to file applications for constitutional review, for example. Article 138 of the Act stipulated that legal assistance must be provided to all persons denied entry into the country or facing deportation, from the outset of the proceedings. The Public Defender Service did not operate solely within the criminal justice system; its work covered a range of areas, including the provision of specialized legal assistance to migrants.

46. **Mr. Tamayo** (Ecuador) said that the Government was in favour of recognizing the competence of the Committee to receive and consider communications under articles 76 and 77 of the Convention. Inter-institutional consultations on the issue were being held and the necessary domestic procedures had been initiated.

47. Training on the rights of persons requiring international protection had been provided to over 300 staff members of the Office of the Deputy Minister for Human Mobility and the Ministry of the Interior.

48. Income from remittances had increased by 9.4 per cent in 2016, to around US\$ 2.6 billion. That increase could be attributed to economic growth in the United States and to a show of solidarity after the earthquake of April 2016.

49. The Ministry of Education had taken steps to ensure access to education for children of foreign nationals and to promote the recognition of qualifications obtained abroad. Since 2016, 5,500 children of foreign nationals had been enrolled in schools. Between 2014 and 2016, 30,000 students had been granted recognition of qualifications they had obtained abroad.

50. **Mr. Jácome** (Ecuador) said that the Government, supported by IOM, was working to establish a system that would enable institutions to share information relating to migration quickly and efficiently. It was important to note that all persons in Ecuador had the right to receive health care, without distinction of any kind.

51. Between 2010 and 2017, steps had been taken to regularize the situation of many migrants from Cuba, Peru and other countries. The Organic Act on Human Mobility had established a new, individualized regularization procedure. Secondary legislation on regularization had been drawn up and would enter into force shortly.

52. **Mr. El-Borai** said that the delegation had not yet responded to the questions concerning, first, the extent of civil society participation in the drafting of the Organic Act on Human Mobility and the State party's report, and second, the scope of the Act and the provision of training to those responsible for its implementation.

53. He would like more information on the rights of migrant workers with respect to labour relations, trade union participation and social security. In particular, he wished to know whether migrant workers enjoyed the same rights as Ecuadorians in the field of labour relations, without distinction on the basis of nationality.

54. **Mr. Ceriani Cernadas** said that he would appreciate more information on the implementation of procedural guarantees along land borders, especially the border with Colombia, and on the labour conditions faced by migrant workers, particularly those working in agriculture in the north and mining in the south. He would like to know what practical measures would be taken to enable people to exercise their right to migrate to Ecuador under the Organic Act on Human Mobility.

55. The Committee had been informed that the resources and tools provided for the implementation of the national plan to combat human trafficking were insufficient and that the plan did not adequately address the issue of labour exploitation. He would welcome information on any steps that were being taken to enable the Ministry of the Interior to fully implement all aspects of the plan. He would also appreciate clarification as to the number of shelters available for victims of trafficking and whether that number was sufficient.

56. It was unclear why only migrants, not nationals, were required to take out health insurance within a certain time frame in order to have access to health care and how migrants' rights to preventive and primary health care were protected by the Organic Act on Human Mobility.

57. He would like more information on the regulations applicable to persons who entered Ecuador as tourists and overstayed the prescribed time period. Were such persons allowed to remain in Ecuador if they paid the applicable fine? With regard to the detention of individuals at airports, he would like to know whether persons without a criminal record were subject to the same procedure as those who were considered a national security risk.

58. Lastly, he wished to know how the authorities dealt with unaccompanied minors who arrived in Ecuador without the necessary documents, including authorization from a parent or legal guardian.

The meeting rose at 6 p.m.