



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 prior to submission of the third periodic report of Ecuador*

Section I

A. General information

1. In the light of the previous recommendations of the Committee (CMW/C/ECU/CO/2, paras. 11 and 12), please report on the steps taken towards making the declarations provided for in articles 76 and 77 of the Convention, recognizing the competence of the Committee to receive communications from States parties and individuals.
2. In view of the recommendation made by the Committee in its previous recommendations (CMW/C/ECU/CO/2, para. 13), please report on the steps taken to ratify the International Labour Organization (ILO) Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).
3. Please indicate the steps taken by the State party to implement the recommendations of the Global Alliance of National Human Rights Institutions Subcommittee on Accreditation to the Defensoría del Pueblo of Ecuador.
4. With regard to bringing domestic legislation into line with the Convention (see CMW/ECU/CO/2, paras. 15 and 16), please provide information on:
 - (a) The measures taken:
 - (i) To effectively guarantee the rights of migrant workers and the members of their family under the Convention, the Constitution of the State party and other existing standards;
 - (ii) To eliminate the existing disparities between, on the one hand, the Convention and the Constitution and, on the other hand, domestic legislation in force, in particular the Migration Act; the Aliens Act; the Law on Travel Documents

* Adopted by the Committee at its twenty-fifth session (29 August-7 September 2016).



(art. 20); regulation 1181 of the Law on Surveillance and Private Security (art. 2, para. 3), which does not allow the employment of foreign nationals in private security companies; and the regulation of Rural Housing and Urban Poverty (art. 3), the latter of which benefits Ecuadorian nationals only.

(b) Any draft legislation aimed at reforming immigration legislation in order to ensure its compliance with the Convention and other international instruments ratified by the State party. If relevant draft legislation is currently being formulated or if relevant legislation has been adopted, please provide detailed information on how all the rights under the Convention have been included, in particular with regards to:

- (i) The rights of migrant workers in an irregular situation, pursuant to the Committee's general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families;
- (ii) Any comprehensive regularization mechanisms in place
- (iii) Whether it provides for administrative detention and, provided it does, on the safeguards in place to ensure that administrative detention is only used as a measure of last resort, and to ensure that administrative detention of children is fully prohibited;
- (iv) Alternatives to detention as a priority response to irregular migration, based on the principle of exceptionality of detention;
- (v) Whether it provides for alternatives to deportation in the event of irregular migration, and on which grounds;
- (vi) How the human rights of migrants, as set out in the Constitution, are implemented in practice, including the human right to migrate (art. 38);
- (vii) Due process guarantees, including the right to free legal aid within migration procedures;
- (viii) Visa and "nationalization" procedures;
- (ix) The recognition of refugee status and other forms of humanitarian protection;
- (x) Tackling trafficking in persons, in particular specific prevention measures with regards to migrants in transit and specific protection measures for victims of trafficking.

(c) In the absence of any legislative amendments or draft legislation being elaborated, please indicate the reasons for the absence and elaborate on the steps taken and/or envisaged to bring domestic legislation into line with the Convention.

5. Please inform the Committee about any specific programmes and/or mechanisms to disseminate the Convention. Please also inform the Committee about the current status of the inter-agency governmental committee in charge of the annual monitoring of the implementation of the Convention. In case that the latter has not yet been established, please specify the reasons. Furthermore, please elaborate on training programmes on the contents of the Convention, targeting the general public and in particular all officials whose work involves migration, labour, education, justice, health, among others, including at the local level. Please further inform the Committee about collaboration with civil society organizations in disseminating information on and promoting the Convention (see CMW/C/ECU/CO/1, paras. 17 and 18; and CMW/C/ECU/CO/2, paras. 19 and 20).

6. Please provide information about the measures taken in collaboration with civil society, including non-governmental organizations, to strengthen the implementation of the Convention and the general participation of civil society in the design, implementation and

evaluation of the State party's migration policy and other policies that are relevant for the implementation of the rights of migrant workers and their families. Please elaborate on the involvement of civil society, including non-governmental organizations, in the implementation of the Convention and in the preparation of the replies to this list of issues prior to reporting (see CMW/C/ECU/CO/2, paras. 21 and 22).

7. Please inform the Committee about the measures taken to bring the National System of Information on Migration into operation, in order to better understand migratory flows and improve the design of government policies. Please provide detailed qualitative and quantitative information on the level of fulfilment of the rights of migrant workers residing and in transit in the State party, and on emigrants, disaggregated by sex, age, civil status, reasons for entering and leaving the country and work performed, with respect to regular and irregular migrants (see CMW/C/ECU/CO/2, para. 18). Please include statistics on detention and expulsion of migrants for immigration-related offences, disaggregated by nationality, sex, age, time of the detention and the reasons for detention and/or expulsion. Furthermore, please provide information on migrants in transit, migrant women, unaccompanied migrant children and cross-border and seasonal migrant workers (see CMW/C/ECU/CO/2, para. 17).

8. Please provide detailed information on the coordination between the public administration institutions that deal with the various aspects of migration. In particular, please indicate whether the State party has carried out any reforms in order to clarify the mandates of the above-mentioned institutions and to strengthen the National Secretariat for Migrants as the coordination mechanism with a view to ensuring a rights-based comprehensive migration policy within every body of the national Government and at the provincial and municipal levels. Please include information on the measures taken to improving the services provided to migrant workers and members of their families, while ensuring uniformity and conformity of those services with the regional and international treaties to which Ecuador is a party. In particular, please indicate whether the Convention has been taken into account in the formulation and implementation of all policies concerning the rights of migrant workers (see CMW/C/ECU/CO/2, paras. 43 and 44).

9. Please elaborate on the measures taken to promote the participation of migrant workers and members of their families in the design of voluntary repatriation programmes that have a direct impact on their socioeconomic and cultural reintegration (see CMW/C/ECU/CO/2, paras. 45 and 46). Please include detailed information on policies aimed at facilitating the reintegration of Ecuadorian migrants and families that return to the country, including qualitative and quantitative rights-based data on the impact of such policies on their access to employment, working conditions and all other human rights.

10. Please provide detailed information on the steps taken to implement the recommendations made in the previous concluding observations (CMW/C/ECU/CO/2) and inform the Committee about the efforts made to transmit them to the National Assembly and the local authorities (see CMW/C/ECU/CO/2, para. 52).

11. Please inform the Committee about the measures taken to disseminate the previous concluding observations (CMW/C/ECU/CO/2); in particular to public agencies, the judiciary and non-governmental organizations and other members of civil society, and to make them known to Ecuadorian migrants abroad and foreign migrant workers residing or in transit in the State party (see CMW/C/ECU/CO/2, para. 53).

B. Information relating to the articles of the Convention

1. General principles

12. Please indicate whether the provisions of the Convention have been directly applied by officials in the administration and if they have been invoked directly before the courts. If so, please provide examples. Please also provide information on:

(a) The judicial and administrative entities competent to examine and decide on complaints by migrant workers and members of their families, including migrant workers in an irregular situation;

(b) The number and type of complaints examined by such entities in the past five years and their outcome, disaggregated by sex;

(c) Whether legal assistance was provided;

(d) Any redress, including compensation, provided to the victims of such violations;

(e) Any measures taken to inform migrant workers and members of their families about the remedies available to them for violations of their rights.

2. Part II of the Convention

Article 7

13. With reference to the recommendations made by the Committee in its previous recommendations, please:

(a) Report on specific measures taken to ensure the implementation of all the rights provided for in the Convention and to prevent and eliminate discriminatory attitudes and social stigmatization against migrant workers and members of their families in the State party, including at school (see CMW/C/ECU/CO/1, para. 19, and CMW/C/ECU/CO/2, para. 24). Please also include information on the measures taken in that respect at the provincial and municipal levels;

(b) Inform the Committee about programmes, projects, campaigns and other measures taken to eradicate discrimination and xenophobia against migrant workers and members of their families, including the human, technical and financial resources allocated to the implementation of such measures. Please also inform the Committee about the number of persons who have been beneficiaries of existing measures and about any other measures envisaged by the State party in this area;

(c) Describe the measures taken with respect to the media, the authorities and the larger public, in order to prevent and eliminate the dissemination of negative stereotypes of migrant workers in the State party, mainly Colombians, Peruvians, Haitians, Cubans and Chinese, associating them with lack of safety, violence, prostitution or access to employment to the detriment of Ecuadorians (see CMW/C/ECU/CO/2, para. 23).

3. Part III of the Convention

Articles 8-15

14. Please provide information on the measures, policies and initiatives undertaken by the State party to prevent and protect Ecuadorian migrants, including unaccompanied children, from disappearing and/or being injured and/or becoming the victim of any violent crime during their transit to the United States of America, and ensure the access by victims to consular assistance and justice and reparation measures.

15. Please provide comprehensive information on the National Council for intergenerational equality, which replaced the National Decentralized System of Comprehensive Protection for Children and Adolescents, and indicate the human, technical and financial resources allocated to it. With reference to the Committee's previous recommendation (see CMW/C/ECU/CO/1, para. 33) and their reiteration (see CMW/C/ECU/CO/2, paras. 38 and 39), please report on the measures taken:

(a) To promote awareness of the general public about the harmful effects of all forms of sexual exploitation of children for commercial purposes, in particular child prostitution;

(b) To eradicate the worst forms of child labour and the involvement of child migrants in domestic child labour in conditions comparable to a contemporary form of slavery, and in hazardous work in garbage dumps and the mining industry;

(c) To establish appropriate mechanisms for the physical and psychological recovery and social reintegration of the victims. Please provide information on the specific measures aimed at ensuring the rights of all categories of children affected by migration within the Child Protection System and related policies. Furthermore, please indicate whether the State party has taken any steps towards establishing a system of data collection on child labour, including migrant child labour.

16. Please inform the Committee about whether the State party has introduced the International System for the Protection of Migrant Children and Adolescents and indicate its results. Please provide concrete information on whether the State party has gathered qualitative and quantitative rights-based data and specific data on unaccompanied or separated child migrants in the State party, their living conditions and the type of work they perform in order to prevent all forms of child labour and to protect the labour rights of adolescents of working age (see CMW/C/ECU/CO/2, para. 40). Please also provide information on policies for the protection of children of migrant workers in the State party, including those in an irregular situation (see CMW/C/ECU/CO/2, para. 47). Please further provide information on any policies that address the difficulties faced by children of migrants, including the children of migrant workers in an irregular situation, as a result of their situation and to guarantee the full enjoyment of their rights (see CMW/C/ECU/CO/2, para. 48).

17. Please provide information on the situation of children of Ecuadorian migrants who have remained in the State party, in particular with respect to their family and education environment and programmes aimed at fulfilling their rights. Please inform the Committee about whether the State party has conducted any studies on the situation of the children of emigrants, including children who remain in the State party with a view to formulating care, protection and, if appropriate according to their best interests, facilitating family reunification.

18. Please provide detailed information on concrete policies and other measures taken to tackle discrimination, exclusion and exploitation, including the violation of labour and social rights, faced by migrant women in the State party and to provide them with adequate support (see CMW/C/ECU/CO/1, para. 37). In particular, please provide information on the inclusion of a gender focus into the State party's migration policies. Please also elaborate on the measures taken to protect migrant women domestic workers, including facilitating their access to a regular migration status, the systematic involvement of the labour authorities in monitoring their working conditions, including in private homes, and promoting access to complaint mechanisms (see CMW/C/ECU/CO/2, paras. 27 and 28). Please also indicate the measures taken to ensure that domestic workers may keep their identity documents.

19. Please indicate the measures taken to protect migrant women from violence, ill-treatment and/or sexual exploitation by employers and ensure they have access to justice as well as to comprehensive protection measures.

Articles 16 and 17

20. Please provide information on legislative and other safeguards in place to fulfil the right to liberty of migrant workers and their families within immigration procedures. In case that migration-related detention is permitted owing to immigration-related offences, please provide detailed information on the measures taken to ensure that detention may only be used as a measure of last resort and to ensure that unaccompanied children and families with children are not subjected to any form of administrative detention. Please indicate the alternatives to detention in place and the procedures for their effective implementation. Please elaborate on the measures taken to harmonize domestic legislation allowing for the immediate arrest and/or deportation of migrant workers in an irregular situation with the Convention and the Constitution of the State party, and to ensure that it does not provide for the criminalization of migration (art. 40) and satisfies the principle of equality and non-discrimination (art. 11 (2)).

21. Please provide information about the laws or other existing regulations regarding the operation of the temporary reception centre Hotel Carrión and any other facilities used for the detention of migrant workers and/or the members of their families. Please also provide information about the requirements to allow access by members of relevant civil society organizations and human rights defenders to those facilities. Furthermore, please inform the Committee about the concrete measures taken to ensure that the conditions of detention are in accordance with international standards, that men and women are duly separated and to ensure the provision of basic social services, including food, health care and hygienic conditions, interpretation, access to justice and all due process guarantees (see CMW/C/ECU/CO/2, paras. 29-32).

Article 22

22. Please provide detailed information on the legislative and other measures taken to ensure that all procedures with regards to migration, particularly in cases of deportation and expulsion (see CMW/C/ECU/CO/1, para. 26), are in full conformity with the rights and guarantees provided for in article 22 and other provisions of the Convention. Please inform the Committee about legislation regulating the decision on and execution of deportation and expulsion orders and on their conformity with the Convention.

23. Please describe the measures taken in order to harmonize legislation eradicating the criminalization of irregular migration with the Committee's general comment No. 2. Please also inform the Committee about any legislative measures to ensure that exceptional procedures of an administrative nature are not handled by the criminal justice system (see CMW/C/ECU/CO/2, para. 30, and CMW/C/ECU/CO/1, para. 26).

24. Please provide detailed information about the reported expulsion of approximately 150 persons of Cuban nationality during the events of July 2016. Please provide detailed information on:

- (a) Whether each case was examined individually;
- (b) The authorities that took the decision;
- (c) How the concerned persons' procedural guarantees were upheld, including the provision of legal assistance, access to justice and the right to an effective remedy and with suspensive effect;

(d) Whether the persons had access to an asylum procedure in accordance with international standards. Please also indicate whether any investigations regarding the legality of the expulsions have taken place (and if so what was their result) or are ongoing or envisaged. Please further indicate, if it can be established that the expulsions were in violation of the Convention, whether the State party is planning to provide appropriate reparations to the persons who were expelled. Furthermore, please provide information on the treatment of children and pregnant women in the course of the above-mentioned events. Please also inform the Committee about the legal provisions that formed the basis of any collective expulsions in contravention of judicial decisions.

25. Please inform the Committee about ongoing training programmes for border or immigration officials on the application of safeguards for the treatment and international protection of those who need them, in particular, those safeguards established under the Convention, the Convention on the Rights of the Child and other human rights treaties, and the 1951 Geneva Convention relating to the Status of Refugees and the 2009 Cartagena Declaration. Furthermore, please elaborate on the level of cooperation with international agencies, such as the Office of the United Nations High Commissioner for Refugees (see CMW/C/ECU/CO/2, para. 34). Please also specify the procedure to cancel or revoke a visa and how due process is guaranteed in such cases.

Article 29

26. Please provide information on the situation of children of Ecuadorian migrants abroad who have not received Ecuadorian identification documents or birth registration and to whom the migration authorities would have denied entry to the State party. Please elaborate on the measures taken to strengthen respect of article 8 of the Constitution and on the measures taken to ensure that children of Ecuadorian migrants abroad have full access to birth registration and identification documents and to ensure that they may enter and leave the State party at any time. Please also inform the Committee about the efforts made to ensure that all children of migrant workers, both in regular and irregular situations, have access to birth registration. (see CMW/C/ECU/CO/2, paras. 34 and 35).

4. Part IV of the Convention

Article 40

27. Please report on the measures taken to ensure that migrant workers and members of their families have the right to form associations and unions and be part of the executive bodies thereof, in accordance with article 40 of the Convention and the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which the State party has ratified (see CMW/C/ECU/CO/2, paras. 41 and 42).

28. Please explain the reasons for differential treatment, according to information before the Committee, regarding the registration of associations of foreign nationals, in particular of refugees or asylum seekers.

Articles 43 and 45

29. According to information before the Committee, the Ecuadorian Social Security Institute is frequently providing foreign nationals with numbers that the State itself refers to as “fictitious”, thereby allegedly hampering the access by foreign nationals to social benefits. Please explain the meaning of this type of fictitious number and the legal basis for this mechanism and the measures taken to ensure access to social security on an equal basis with nationals.

30. Please comment on information before the Committee according to which persons of Cuban nationality are subjected to differential treatment by the National Secretariat of Higher Education, Science and Technology regarding the validation of qualifications.

5. Part VI of the Convention

Articles 64-68

31. Please indicate the efforts made to adopt laws and regulations to ensure the implementation of legislation to combat human trafficking (see CMW/C/ECU/CO/2, paras. 49 and 50). In particular, please elaborate on:

(a) Programmes to prevent and prosecute trafficking in persons and effectively and comprehensively protect trafficking victims and provide them with adequate assistance and rehabilitation;

(b) Measures taken to provide adequate training and capacity-building for law enforcement officials, judges, prosecutors, labour inspectors, service providers, teachers and embassy and consular personnel and other relevant professionals in the State party;

(c) Efforts made to effectively and impartially investigate, prosecute and punish all acts of trafficking in persons;

(d) The establishment of protection shelters and programmes to help victims of trafficking to rebuild their lives;

(e) The annual budget dedicated to detecting and eliminating trafficking in persons and providing protection to trafficking victims;

(f) The number of judgments issued on this crime, including detailed information on the number of condemnations, type of sentences and reparation provided to victims;

(g) The steps taken to strengthen data collection on victims of trafficking. Please also indicate whether victims of trafficking may be granted temporary or permanent residence permits and provide qualitative and quantitative data in this respect. Please further indicate the measures taken to provide training to judges involved in the decision on deportation cases to identify victims of trafficking or smuggling.

32. With reference to the previous recommendations made by the Committee in the area of smuggling of migrants (see CMW/C/ECU/CO/2, para. 51), please inform the Committee about the efforts made, particularly with regards to:

(a) Ensuring that migrant workers in an irregular situation are not criminalized;

(b) Addressing the root causes of irregular migration, particularly through policies and programmes to implement the human rights of every individual subject to the State party's jurisdiction;

(c) Stepping up campaigns for the general public at the local level on the risks of irregular migration;

(d) Facilitating and promoting regular and safe migration.

33. Please provide information on the content and scope of the bi-national protocol on human mobility, signed on 10 May 2016 between the State party and Colombia on the deportation of persons from third countries. Please detail how the rights and guarantees provided for under the Convention have been integrated in the agreement and other agreements the State party has concluded with other countries.

Article 69

34. Please indicate the efforts made to establish and implement a comprehensive migration regularization policy that is accessible to all migrant workers and members of their families in an irregular situation and satisfies the principle of non-discrimination (see CMW/C/ECU/CO/2, para. 34). Please inform the Committee about the types of residence permits available and the State party and the procedure to apply for these in order to facilitate the right to migrate as recognized in article 40 of the Constitution. Please provide statistical data from 2011 on residence permits granted, disaggregated by nationality, sex, age and regularity of migration, including residence based on the Southern Common Market (MERCOSUR) residence agreement of 2002 ratified by the State party. Furthermore, please indicate the requirements necessary to obtain temporary and permanent residence permits.

Section II

35. The Committee invites the State party to provide information (in no more than three pages) regarding the protection of migrant workers and members of their families with respect to the following:

- (a) Bills or laws, and their respective regulations;
- (b) The institutions (and their mandate) responsible for the implementation of migration policies and the institutional reforms undertaken since 2011 (for instance with regard to the mandate and activities by the National Secretariat for Migrants);
- (c) Policies, programmes and action plans relating to migration and specifically to the rights of migrant workers and members of their families, and their scope and financing;
- (d) Recent ratifications of human rights instruments, specifically the ILO Migration for Employment Convention (Revised), 1949 (No. 97); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); and the Domestic Workers Convention, 2011 (No. 189);
- (e) Recent comprehensive studies on the situation of migrant workers and members of their family and on Ecuadorian nationals residing and working in other countries;
- (f) Mechanisms in place to facilitate access to public information on migration and the rights under the Convention.

Section III**Data, official estimates, statistics and other information that is available**

36. Please provide updated disaggregated statistical data as of 2011 on:

- (a) Migrant workers detained in the State party, including persons detained for immigration-related offences;
- (b) Migrant workers who are nationals of the State party and are detained in their country of transit or employment, in particular for immigration-related offences;
- (c) Migrant workers and members of their families who have been expelled or deported from the State party, and the reasons for these expulsions and deportations;

- (d) The number of non-accompanied migrant children or migrant children separated from their parents in the State party, disaggregated by nationality, age, sex and immigration status;
 - (e) Remittances received from migrant workers who are nationals of the State party and who work abroad, in numbers and as percentage of the State party's gross domestic product;
 - (f) Reported cases of trafficking in and smuggling of migrants, investigations, prosecutions and sentences imposed on perpetrators (disaggregated by sex, age, nationality and purpose of trafficking or smuggling); and protection measures for victims of trafficking;
 - (g) Legal assistance services provided to migrant workers and members of their families in the State party and to nationals of the State party working abroad or in transit through third States;
 - (h) The number of people rejected in ports, airports and land border crossings, disaggregated by year, nationality, sex and age, and the reason for these cases of rejection;
 - (i) The situation of migrant women, disaggregated by age, nationality, marital status, head of the household and immigration status;
 - (j) Approximate number of persons in an irregular situation.
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