



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 Twenty-seventh session

Summary record of the 362nd meeting

Held at the Palais des Nations, Geneva, on Tuesday, 5 September 2017, at 10 a.m.

Chair: Mr. Brillantes

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The meeting was called to order at 10 a.m.

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

Third periodic report of Ecuador (continued) (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) said that the Organic Act on Human Mobility had been the result of dialogue with all stakeholders, including civil society organizations, private and State institutions, universities and international organizations, and methodical consideration of input from those potentially affected. The draft Act had been submitted to the Special Standing Committee on Sovereignty, Integration, International Relations and Comprehensive Security, and thence to the National Assembly.
3. The draft had been the outcome of nine events, held in various parts of the country and involving 800 participants. In addition, 30 awareness-raising events had been held in other countries to inform Ecuadorian migrant workers about the new legislation.
4. A round-table discussion on human mobility had been held in July 2017 as part of the national dialogue on the aims of the new Government, and Ecuadorian consulates were conducting dialogues with Ecuadorian migrant communities abroad. Many of the delegation's comments at the current meeting directly reflected the input provided in those dialogues.
5. Social security agreements were being negotiated with a view to ensuring the portability of benefits, not only for migrant workers in Ecuador but also for Ecuadorians abroad, on the basis of the principle of equal treatment. Bilateral agreements had already been signed with such countries as Spain, Chile, the Bolivarian Republic of Venezuela and the Netherlands.
6. In order to ensure the pertinence of its new legislation on admission to and residence in the national territory, Ecuador had identified various categories of visitor and resident, in accordance with their reasons for being in the country; the law and its implementing regulations were intended to meet the particular needs of each group. Immigration status was defined in terms of two broad groups: residents, either temporary or permanent, and visitors, who could be either "in transit" (*transeúntes*), tourists or applicants for international protection. Temporary residents were divided into various categories.
7. The elimination, in most cases, of short-stay or tourist visas did not exempt Ecuadorian or foreign nationals from the requirement to enter and leave the country at authorized border checkpoints. Safe migration required clear procedures, which were also effective in combating trafficking and defending human mobility. The defence of freedom of movement went hand in hand with action against international organized crime.
8. Agricultural workers from Ecuador's neighbours Colombia and Peru received special consideration as frontier workers that reflected their particular family and social situations. Under the relevant bilateral agreements they had fast-track access to residence and visa procedures, thereby avoiding situations of legal uncertainty.
9. **Mr. de la Vega** (Ecuador) said that, under the Constitution, Ecuadorians abroad were entitled to elect special representatives to the National Assembly. That guaranteed that their views on any situation affecting them could be expressed. Those representatives had played an important part in the discussions on the Organic Act on Human Mobility.
10. With regard to the State's policies and plans to combat trafficking and migrant smuggling, he said that Ecuador was concerned at all types of trafficking, not only trafficking for purposes of sexual exploitation. Some 12 per cent of rescued trafficking victims had been victims of labour exploitation. It was nonetheless true that the State policy needed to be updated, and that would be done following the mandatory update of the National Development Plan that each new Government was obliged to carry out. As the

lead agency for the prevention of trafficking, the Ministry of the Interior worked with other government departments to ensure consistency in prevention policies.

11. As to the State's ability to deal with victims of trafficking, he confirmed that there were two shelters for victims of sexual exploitation specifically; another 57 centres catered for victims of other forms of trafficking. It was certainly important for the State to increase its capacity in that regard. One problem was that adults received less attention, the primary focus currently being on adolescents and girls. However, the law now clearly specified which institutions were responsible for such services, namely the Ministry of Economic and Social Inclusion in respect of minors and the Ministry of Justice, Human Rights and Religious Affairs in respect of adults, which meant that it was for those departments to build up capacity as required.

12. When victims were identified they were referred to the Victim and Witness Protection Programme, which provided immediate assistance and short-term accommodation. That arrangement was not ideal for the long term, and the State needed to develop a more holistic approach to facilitate victims' full reintegration in society.

13. The new legislation provided for an appeal procedure in the event of denial of entry at the border. Such cases were referred to the Ministry of Foreign Affairs and Human Mobility and to a public defender, and a review hearing was required to be held within 24 hours. Meanwhile, the applicant was under the responsibility of the Ministry of the Interior, which was required to ensure that he or she was held in decent conditions.

14. Although national security was one of the grounds for denying a person entry to the country, it had not been applied in the last five years. Ecuador was undergoing a change of paradigm when it came to the security of the State. The National Police, which in the past had been highly militarized, was now focused on community-based policing. As a result, the level of public acceptance of the police had increased exponentially and was now the third highest in Latin America, according to the Latinobarómetro public opinion survey. Police officers received ongoing human rights training, including on international human rights instruments such as the Convention. The National Police maintained contacts with other police forces in the region and internationally to share information on persons involved in organized crime, for example.

15. **Mr. Espín Arias** (Ecuador) said that the system of protection for workers was based on balance and equality. Special measures and regulations were in place to address cases of discrimination, including additional protection or remuneration in cases of unfair dismissal on the grounds of nationality, for example. All workers in Ecuador, including migrant workers, were covered under the mandatory universal social security system. The Organic Act on Human Mobility provided for fines to be levied against employers who did not register migrant workers in the social security system or did not pay them the same wage as Ecuadorian workers, against migrants who entered Ecuador as tourists and exceeded the maximum regular stay, against temporary and permanent residents who left the country for longer than the maximum number of days permitted, and against persons who facilitated the unauthorized entry of migrants.

16. Great importance was attached to training on human rights; the establishment of the School of the Judiciary, which provided initial and ongoing training to justice officials, had been a major step forward in that regard. In 2015-2016, a total of 2,648 justice officials had received human rights training, including on subjects such as gender-based violence, trafficking and femicide.

17. **Mr. Tamayo** (Ecuador), responding to the question on mandatory health insurance as a prerequisite for entry to the country, said that public and private health-care institutions could not deny emergency treatment on the grounds of a person's nationality or immigration status. Ecuador designed its public policies with a view to achieving Sustainable Development Goal 3 on ensuring healthy lives and promoting well-being for all at all ages. However, as Ecuador was a developing country endeavouring to achieve universal access to health care, there was a need for shared responsibility on the part of persons using public health services in non-emergency cases. Foreign nationals received an identity document that gave them access to social security on an equal basis and, in turn, to the national public health system. It was not necessary for persons in the border integration

zones with Colombia and Peru to have health insurance. The requirement also did not apply to refugees and asylum seekers.

18. The Ministry of Foreign Affairs and Human Mobility had developed a protocol for the care of unaccompanied minors, particularly asylum seekers, taking into account the best interests of the child. The protocol provided that the agents who made initial contact with such minors had the obligation to report them to the Special Police for Children and Adolescents, who would conduct an interview, and a family or juvenile judge would determine the appropriate protection measures and accommodation. Throughout the process, the minor was supported by a psychologist and the Ministry of Economic and Social Inclusion.

19. **Mr. Tall** said that the State party was to be commended on its political will and considerable efforts to implement the Convention and to integrate migrants into society and respect their rights. He would be interested to know whether Ecuadorian citizens living abroad were entitled to vote in national elections and, if so, how the system of overseas voting was organized. He asked whether migrant workers could join trade unions and if any migrants were represented in the union leadership. With regard to access to justice, he would be grateful for examples of complaints of discrimination lodged by migrant workers.

20. **Mr. Ceriani Cernadas** (Country Rapporteur) said that, although he had taken note of the explanation that the mass expulsion of Cubans in July 2016 had taken place prior to the enactment of the Organic Act on Human Mobility, the Convention and other relevant instruments had, of course, already been in force at the time. He therefore wished to know whether there had been an independent investigation into the matter and, if so, whether the findings had been shared. He would be grateful for clarification of the cases in which the Ministry of the Interior could revoke a court order for the suspension of a deportation. He would also welcome details of how, in the context of applications for residency, lawful means of earning a living were evaluated. He wondered what permanent solutions were available for the regularization of immigration status, beyond any ad hoc plans, for migrant workers from countries outside the Southern Common Market (MERCOSUR).

21. With regard to the system of fines for migrants who entered the country as tourists and overstayed the maximum period, the delegation should indicate what happened if the fine was not paid and also whether it was possible to obtain a residence permit if the fine was paid. He asked whether there were any exceptions to the rule on revoking a visa if a temporary resident left the country for more than 90 days. While he understood that a lack of travel documents or the appropriate visa was grounds for the denial of entry to the country under the Organic Act on Human Mobility, it would be useful to learn why there was no need for an administrative procedure in such cases. Additional information should be provided on administrative appeals and applications for constitutional review in the context of deportations. He asked whether migrant workers who unsuccessfully appealed against a refusal to grant asylum could apply for judicial review of the decision. He would appreciate further information on the situation of Venezuelan nationals in Ecuador, the type of residence permit available to them and the associated procedures and costs.

22. He wondered whether the impact of awareness-raising measures on xenophobia had been evaluated and whether any legal cases had been brought by victims of xenophobia. He would be interested to know whether immigrant communities were directly represented in the National Council on Equality in Human Mobility. He would be grateful for additional information on the overseas offices of the Ombudsman's Office, and how their role compared to that of Ecuadorian consular offices abroad. The delegation might comment on the impact of the special regimes for Peruvian workers in the mining sector and Colombians in the agriculture sector and their working conditions in practice. He was not sure he had understood the concept of shared responsibility in relation to health care and would welcome further explanation.

23. **Mr. El-Borai** said that he had not yet received an answer to his question on equal rights for migrant and local workers in Ecuador. He asked what the delegation understood by the term "exploitation" in the context of labour relations. Information on equal remuneration and the duration of working hours would be welcome. It would also be

interesting to know whether migrant workers had the right to organize under domestic legislation.

24. **Ms. Dicko** said that she was still waiting for a reply to her question on the recruitment of Ecuadorian workers for employment abroad. The Committee would be interested to learn whether such recruitment was managed by private agencies or public bodies. She asked whether the Government actively promoted migration abroad or encouraged young people and women to remain in Ecuador.

25. **The Chair** said that he wished to know whether the Organic Law on Human Mobility applied only to documented workers. Furthermore, the delegation had not yet informed Mr. Ceriani Cernadas of the consequences of non-payment of fines for foreign nationals overstaying the period prescribed by law.

The meeting was suspended at 11.15 a.m. and resumed at 11.45 a.m.

26. **Mr. Jácome** (Ecuador) said that immigrants, Ecuadorians resident abroad, former migrants who had returned to Ecuador and persons under international protection were free to set up associations promoting human mobility; indeed, there were currently over 100 such bodies in the country. Ecuadorian citizens and foreign nationals enjoyed the same rights and had the same duties under domestic legislation.

27. As to the exercise of the right to vote, 820 polling centres had been opened in 46 countries around the world in the context of the 2017 presidential election. Around 85 per cent of Ecuadorian voters resident abroad lived in the United States of America, Italy or Spain. Migrants abroad made up 2.92 per cent of the total Ecuadorian electorate and their level of participation in the electoral process had risen by over 160 per cent since 2006.

28. As to the National Council on Equality in Human Mobility, he referred to the information contained in paragraph 68 of the State party's report (CMW/C/ECU/3). A human mobility agenda implemented by the Ministry of Foreign Affairs and Human Mobility had been mainstreamed into training courses and plans to prevent risky migration, with a view to ensuring that public policies on human mobility had an impact at the grass-roots level, in line with the outcome of the United Nations Conference on Housing and Sustainable Urban Development (Habitat III).

29. Ecuador was governed by the rule of law and the national authorities facilitated the regularization of the status of foreign nationals. The Organic Law on Human Mobility had only recently been enacted and a number of procedures and regulations under the secondary legislation to be adopted in that regard had yet to be implemented. Consequently, measures had been taken to simplify and harmonize the regularization process and ensure inter-agency coordination in that regard.

30. Not all persons fitted into pre-established categories; visas could exceptionally be granted in circumstances where implementation of the existing regulations would harm the best interests of the applicant.

31. **Mr. Long** (Ecuador), turning to a series of questions posed by Mr. Ceriani Cernadas, said that recent improvements in relations between Cuba and the United States had led to increased concern among Cubans that they might lose the migration privileges granted to them under the Cuban Adjustment Act of 1966 and the so-called "wet foot, dry foot" policy of 1995. Consequently, significant numbers of Cuban nationals had attempted to reach the United States through the Andean region and Central America, leading to the closure of the Nicaragua-Costa Rica border. A number of Andean and Central American countries were currently deporting large numbers of Cubans. The 149 Cuban nationals deported from Ecuador had repeatedly turned down official invitations to stay in the country, and some had even requested to be flown to the United States. The Government of Ecuador had obtained assurances from the Cuban authorities that the migrants in question would not face retaliation should they return home. Rather than allowing the migrants to undertake a risky journey to the United States, the Ecuadorian authorities had preferred to deport them. Ecuador had spearheaded efforts at the regional level to persuade the United States authorities to adopt more progressive policies relating to human mobility and to treat all Latin American migrants equally. The "wet foot, dry foot" policy had subsequently been repealed.

32. The situation concerning Ms. Manuela Picq was in no way related to migration or human mobility. She had contracted an ancestral marriage in Ecuador, as was her constitutional right, but had failed to register that union with the civil authorities. She was, and always had been, free to visit Ecuador for a limited period without a visa, or to apply for any of a number of different visas. However, she could not apply for a visa based on her marital status because she had not registered her marriage. Ms. Picq had turned the issue of recognition of her ancestral union into a political cause, which she promoted through her numerous contacts in civil society organizations with access to certain United Nations treaty bodies.

33. **Mr. de la Vega** (Ecuador), turning to the issue of the deportation of Cuban nationals, said that, at the time of the events in question, such cases had been handled through the minor offences court. Following a process of restructuring and the introduction of the Organic Law on Human Mobility, deportation cases were directly managed as administrative matters by the Ministry of the Interior, which had previously been limited to the role of observer in that regard.

34. Under article 137 (4) and (5) of the Organic Law on Human Mobility, foreign nationals could immediately be refused entry into Ecuador because they lacked a valid travel document; a valid visa, where applicable; or proof of immigration status. Short-stay visas were required only for nationals of 11 countries. The Ministry of the Interior was responsible for carrying out administrative immigration checks. The National Police investigated cases of trafficking in persons and other offences related to migration.

35. The number of Venezuelan citizens entering Ecuador had risen sharply in June and July 2017. As a result, additional immigration officers had been recruited to strengthen capacity at specific entry points and inter-agency cooperation had been boosted. An inter-institutional committee had also been set up to provide Venezuelans with access to health-care and transport services.

36. Additional information on labour exploitation and trafficking in persons would be provided to the Committee in writing. A number of indigenous Ecuadorians had been trafficked and put to work in precarious conditions.

37. **Mr. Espín Arias** (Ecuador) said that trade union rights were enshrined in article 326 of the Constitution, which was reflected in article 440 of the Labour Code. Both articles stipulated that all persons without distinction had the right to join trade unions and professional associations and to participate in their activities, including in leadership positions. No restrictions were imposed on foreigners in that regard. With respect to the action taken by national employment agencies to support the participation of migrant workers in the labour market, the Red Socio Empleo jobs network was a public-sector entity tasked with seeking employment opportunities. In 2015-2016 it had found jobs for 1,232 people, including migrants.

38. Decisions concerning deportation could be contested in the Administrative Court pursuant to the Organic Act on Human Mobility. Where the constitutional rights of the person concerned had not been duly recognized, judicial proceedings could be instituted. Article 173 of the Constitution stipulated that administrative acts by any State authority could be challenged, both through administrative proceedings and through the competent judicial bodies.

39. Under the implementing regulations for the Organic Act on Human Mobility, rules governing the payment of fines were to be developed within 90 days after the promulgation of those regulations. People's residence status in Ecuador was a separate issue from the fines that were payable by tourists or other persons who overstayed the applicable time limit and subsequently wished to re-enter the country.

40. **Mr. Tamayo** (Ecuador), referring to the different roles assigned to the Ombudsman's Office, which was the national human rights institution, and to Ecuadorian consulates, said that the former was mandated to protect Ecuadorians both within the country and abroad. As priority was given to locations where a large number of Ecuadorians resided, representatives of the Ombudsman's Office were based in Mexico, Spain, Italy and the United States and worked in cooperation with the consulates. They

provided support for citizens who were involved in legal proceedings, while the consulates fulfilled a far broader mandate, providing comprehensive protection and upholding the interests of Ecuadorians and their families.

41. With regard to sanctions and legal proceedings aimed at eradicating xenophobia, a body responsible for controlling and monitoring information had been established under the Organic Act on Communication. Citizens could file complaints if they considered that discriminatory material had been disseminated by the media. Two cases had been addressed between 2014 and 2016, one concerning discrimination based on immigration status and the other concerning employment-related discrimination. One means of redress was to request the media to rectify any discriminatory information that had been disseminated.

42. **Mr. Jácome** (Ecuador) said that the Organic Act on Human Mobility was applicable to Ecuadorians abroad and to foreigners within the country, regardless of whether they were in a regular or irregular situation.

43. **Mr. de la Vega** (Ecuador) said that the National Police was not an autonomous legal, administrative or financial institution. It was entirely subject to the civil authority of the Ministry of the Interior and thus to continuous oversight and monitoring. Recent Governments had focused on promoting human rights, for instance by investing in capacity-building and human rights training courses for National Police personnel. When irregularities were identified, civilian staff members of the Ministry of the Interior looked into the matter.

44. The public officials responsible for combating human trafficking were civilians. The role of the police consisted in providing support for investigations and disbanding networks involved in trafficking.

45. **Mr. Ceriani Cernadas** enquired about the procedures for filing an administrative appeal against deportation. He wished to know whether, if the decision was confirmed, a document was sent to the appellant announcing its confirmation and specifying the number of days within which the person concerned was required to regularize his or her situation. He also asked whether there was any judicial oversight of such decisions.

46. **Mr. de la Vega** (Ecuador) said that all persons who were deemed liable to be deported owing to their irregular situation must be notified of that decision. If they were unable to prove their immigration status within 30 days, they were requested to leave the country on a voluntary basis. A hearing on the deportation order was arranged so that they could exercise their right to a defence. If they failed to attend, the hearing was cancelled. They were also guaranteed access to defence counsel, and an appeal against the deportation order could be lodged with the judicial system.

47. **Mr. Ceriani Cernadas** said that the Committee appreciated the fact that the State party was engaging for the third time in an interactive dialogue. He also commended the adoption of the Organic Act on Human Mobility in February 2017. Institutional coordination, development of relevant regulations and the allocation of resources for effective implementation of the Act were of the utmost importance.

48. **Mr. Jácome** (Ecuador) said that vigorous action was being taken to implement the new Act and the delegation had taken due note of all the Committee's useful comments.

49. He highlighted the role of human mobility in civilization. Migrant workers supported the economic development of host countries and helped to consolidate their national identity. Human mobility was multifaceted and required a specific response from the international community. Priority should be given to the development of adequate definitions of different types of mobility and of policies that catered to migrants' needs. By adopting the Organic Act on Human Mobility, Ecuador had risen to the challenge of ensuring that all State institutions were equipped with a legal framework to produce plans, programmes and projects conducive to the integration of people moving through its national territory. It was essential to respect the 2030 Agenda for Sustainable Development and the Quito Declaration on Sustainable Cities and Human Settlements for All. Human mobility must be accompanied by a comprehensive policy of public security, and an ecosystem that prevented violence, organized crime, smuggling, and trafficking of migrants, drugs and human organs.

50. He underscored the principles underlying the Organic Act on Human Mobility, including universal citizenship, free human mobility, protection of Ecuadorians abroad, equality before the law, non-discrimination, the best interests of children and adolescents, and non-refoulement.

The meeting rose at 12.50 p.m.