



**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

**WRITTEN REPLIES BY THE GOVERNMENT OF ECUADOR CONCERNING  
THE LIST OF ISSUES (CMW/C/ECU/Q/1) RECEIVED BY THE COMMITTEE  
ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND  
MEMBERS OF THEIR FAMILIES RELATING TO THE CONSIDERATION OF  
THE INITIAL REPORT OF ECUADOR (CMW/C/ECU/1)\***

[Received on 2 August 2007]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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## I. GENERAL INFORMATION

**Please specify at what stage is the process of harmonizing national legislation on migration with the Convention.**

1. The Constitution of Ecuador guarantees to all the country's inhabitants the rights explicitly established therein, as well as the rights set forth in the international instruments in force in Ecuador, including the Convention. The Convention is an international instrument, which, under Ecuadorian legislation, may be applied directly by a judge or a court. Nevertheless, the Government recognizes the need to amend certain provisions of the Migration Act and the Aliens Act and the related regulations, which, as indicated in the official report, are obsolete and in many cases no longer applied.

2. Certain provisions of the Migration Act and the Aliens Act do not apply in the manner in which they are set forth; in order to be implemented, account is taken of higher-ranking legislation, such as the Constitution and the Civil Code.

3. For this reason, only some of the inaccuracies contained in the shadow report, with regard to the implementation of Ecuadorian legislation, will be clarified for the Committee:

(a) Even though the Aliens Act does not refer explicitly to "de facto unions" but rather to "spouses", in practice, it does recognize de facto unions for which provision is made in Ecuadorian legislation. In this country, there have not been any cases in which the parties to a legally recognized de facto union were denied a visa solely on the grounds that they were not married;<sup>1</sup>

(b) Persons who are denied a visa, which is an act of the administration, do have access to an administrative complaints procedure and, without prejudice to the exhaustion of this remedy, can have recourse to the justice system through the Administrative Court;<sup>2</sup>

(c) With regard to the Migration Act, persons with serious, chronic or contagious illnesses are not denied entry to the country on this basis. In fact, no system of health checks is applied for the purpose of detecting illnesses in individuals entering Ecuador;<sup>3</sup>

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<sup>1</sup> Information provided by telephone by Dr. Ruth Vásconez of the Department of Migration Affairs and Aliens, Ministry of Foreign Affairs.

<sup>2</sup> Information provided by telephone by Dr. Ruth Vásconez of the Department of Migration Affairs and Aliens, Ministry of Foreign Affairs.

<sup>3</sup> Information provided by telephone by Dr. José Galarza of the Department of Migration.

(d) Persons who employ migrant workers are not liable to criminal prosecution. Rather, the checks carried out sporadically by the Ministry of Labour are intended to guarantee that migrant workers' labour rights are respected, while the inspections carried out by the Ecuadorian Social Security Institute are aimed at verifying that employers are meeting their obligations to pay contributions on behalf of workers.<sup>4</sup>

Not one criminal case has been brought against an employer for hiring migrant workers, whether they are in a regular or irregular situation. What does happen is that criminal investigations are initiated when inspections reveal that persons posing as "employers" are committing the offence of trafficking in persons: for example, if large numbers of undocumented workers are found crowded into a "workplace" and living in unsanitary conditions. In such cases, the Department of Migration brings this irregular situation to the attention of the Prosecutor's Office so that the appropriate investigation may be initiated.<sup>5</sup>

4. As indicated in the shadow report, several bills have been submitted to the National Congress with the aim of establishing a framework of protection for the Ecuadorian emigrant population, while others have related to the treatment of immigrants in Ecuador, amendment of the Aliens Act and the Migration Act and the related regulations, and amendment of the Labour Code.

5. In this connection, the Congressional Committee on Civil and Criminal Affairs has prepared reports on the Emigrant Bill (No. 24-170), which was sponsored by deputy Omar Quintana, and on a bill on the same topic (No. 24340), which was sponsored by deputy Andrés Páez in 2005.<sup>6</sup>

6. In addition, a bill on comprehensive support for migrants and their families, which brings together several bills on the same topic that were submitted during various legislative sessions, is in its second reading within the Congressional Committee on Labour and Social Affairs.

**Please describe the role of non-governmental organizations (NGOs) in the preparation of the State party's report.**

7. The Human Rights Coordination Commission, which was established by means of Executive Decree No. 3493, published in *Official Gazette* No. 735 of 31 December 2002, is an inter-agency body that has worked in cooperation with civil society since its inception.

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<sup>4</sup> Information provided by Dr. Jorge León of the Ministry of Labour, by telephone.

<sup>5</sup> Information provided by telephone by Dr. José Galarza of the Department of Migration.

<sup>6</sup> Information provided by Mauricio Larrea, chairperson of the Specialized Standing Committee on International Affairs and National Defence, in letter No. 188-CEPAIDN-CN-07 of 2 July 2007.

8. The work of this Commission focuses primarily on the design and drafting of State reports to be submitted to the various human rights bodies; on informing government agencies and civil-society organizations of the recommendations issued by these international bodies; and on coordinating follow-up to the recommendations and the design and implementation of a training policy in accordance with international human rights instruments. The participation of civil society has been very important in carrying out these efforts.
9. Ecuador's initial report to the Committee on Migrant Workers is the outcome of a process involving more than a year of work, during which countless written and oral consultations were carried out with State institutions and civil-society organizations in order to collect and process reliable information on the subject.
10. Furthermore, three workshops were held in February and November 2005, and in May 2006, to prepare, revise and consolidate the final version of the report. State officials and members of civil society who are experts on the subject participated in the working groups set up for the purpose of drafting the report.
11. In view of the foregoing, Ecuador does not accept the statement made in the shadow report to the effect that it has not encouraged participation by and inputs from civil society. On the contrary, members of non-governmental organizations (NGOs) known to be working in the field of migration were urged to participate actively in meetings, primarily to provide information on particular cases or any complaints they have received in the course of their work. They were even given a draft of the report and, on several occasions, were requested to submit comments and suggestions.
12. The State is grateful for the input of the members of civil society who did take an active part in preparing the report. It regrets not having benefited from cooperation by all the NGOs and experts on the subject who were invited to participate, for example the author of the shadow report, who, before acting as Technical Secretary of the Inter-Agency Coalition for Migration and Asylum, and in view of her experience in this area, was sent a preliminary copy of the initial report but failed to submit any comments on it, despite repeated requests.
13. Hard copies of the official announcements, a list of meeting participants and requests for information are on file in the Ministry of Foreign Affairs.

The following persons took part in preparing the report:

Dr. Luis Avila, Servicio Jesuita a Migrantes (Jesuit Migrants Service)

Dr. Luis Tupac Yupanqui, Servicio Jesuita a Refugiados (Jesuit Refugee Service)

Dr. Susana Quiloango, Instituto Sindical de Cooperación al Desarrollo - ISCOD  
(Trade Union Institute for Development Cooperation)

Dr. Miriam Sánchez, Consejo Indio de Sud America - CISA (Indian Council of South America)

Ms. Ana María Guacho, Fundación Guaman Poma (Guaman Poma Foundation)

Mr. Ramiro Maldonado, Consejo de Mujeres Indígenas del Ecuador - CODMIE, Remanso de Amor

Ms. Paula Mina, Coordinadora de Radios Populares y Educativas del Ecuador - CORAPE (Coordinator of Popular and Educational Radio Stations of Ecuador) and Pontificia Universidad Católica del Ecuador - PUCE (Pontifical Catholic University of Ecuador)

Ms. Priscila Chalá, Universidad Andina Simón Bolívar (Simón Bolívar Andean University)

Mr. Santiago Salvador, Instituto Nacional de la Niñez y la Familia - INFA (National Institute for Children and the Family)

Mr. Alejandro Guidi, International Organization for Migration - IOM

The following persons were invited to participate:

Mario Cadena, Coordinator of the Migration, Communication and Development Plan

Gabriela Omedo, Coordinadora de Radios Populares y Educativas del Ecuador - CORAPE (Coordinator of Popular and Educational Radio Stations of Ecuador)

Myriam Sánchez, Comunidad Integradora del Saber Andino (Community for the Integration of Andean Knowledge)

Gardenia Chávez, Universidad Simón Bolívar (Simón Bolívar University), Programa Andino de Derechos Humanos - PADH (Andean Human Rights Programme)

Paula Moreno, Servicio Jesuita Migrantes (Jesuit Migrants Service)

Pablo Araujo, Servicio Jesuita Migrantes (Jesuit Migrants Service)

Carlos Tufiño, Casa del Migrante (Migrant House)

Lina Cahuasqui, Comité Andino de Servicios (Andean Service Committee)

José Rosero, Sistema Integrado de Indicadores Sociales del Ecuador - SIISE (Integrated System of Social Indicators of Ecuador)

Judith Salgado, Programa Andino de DDHH (Andean Human Rights Programme)

Santiago Arguello, Plan País Ecuador (Country Plan of Ecuador)

Fabián Zurita, Confederación Nacional de Organizaciones Campesinas, Indígenas y Negras - FENOCIN (National Federation of Tenant Farmers, Indigenous and Black Organizations)

Teresa Simbaña, Consejo de mujeres indígenas del Ecuador - CONMIE (Council of Indigenous Women of Ecuador)

Giuseppe Solfrini, Director of Associazione per la Cooperazione Internazionale e l' Aiuto Umanitario - ALISEI (Association for International Cooperation and Humanitarian Aid)

Juan Carlos Ocles, Alianza Estratégica (Strategic Alliance)

Patricio Pazmiño Freire, Centro de Derechos Económicos y Sociales - CDES (Centre for Economic and Social Rights)

Marco Tulio Navas, Instituto Latinoamericano de Investigaciones Sociales - ILDIS (Latin American Institute of Social Research)

Susy Garbay, Fundación Regional de Asesoría en Derechos Humanos - INREDH (Regional Foundation for Advisory Services in Human Rights)

Freddy Rivera, Facultad Latinoamericana de Ciencias Sociales - FLACSO (Latin American Faculty of Social Sciences)

Jaime Vintimilla Saldaña, Centro sobre Derecho y Sociedad - CIDES (Centre for Law and Society)

Pablo de la Vega, Centro de Documentación en Derechos Humanos "Segundo Montes Mozo" ("Segundo Montes Mozo" Centre for Human Rights Documentation)

José Vicente Eguiguren, Conferencia Episcopal Ecuatoriana (Ecuadorian Episcopal Conference)

Gina Benavides, Casa del Migrante (Migrant House), Quito metropolitan district

14. Lastly, we wish to inform the Committee that the draft of the report was published in electronic form in September 2006, and the criticisms and suggestions received were analysed and incorporated into the text.

15. Ecuador made a considerable effort in its initial report to inform the Committee of the current legislative framework for protection of the rights of migrant workers, as well as the practical difficulties encountered in implementing the provisions of the Convention, with a view to promoting needed improvements following examination of the report.

**Please provide updated information, including statistical disaggregated data, on the volume and nature of migratory flows in the State party's territory in the period 2003-2006.**

16. The Government is in agreement with civil society that the data collected in the area of migration are not sufficiently disaggregated - hence the need for international technical cooperation and the implementation of some of the recommendations contained in the shadow report. The fact is that the majority of State institutions in Ecuador do not have the technical capacity to collect and supply the statistical data needed to evaluate the situation properly. Moreover, owing to the permeability of Ecuadorian borders, there is an uncontrolled migratory flow across the border that is impossible to quantify.

17. Despite this, statistical tables established on the basis of information supplied by the Department of Migration concerning the arrival and departure of Ecuadorians and foreigners for the period 2003-2006 have been attached.

18. The attached information, supplied by the Department of Migration, shows that between 2003 and 2006, 3,094,777 foreigners arrived in Ecuador and 2,595,199 foreigners departed, leaving a difference of 499,578 persons who remained in Ecuador.

19. According to the records of the Department of Migration concerning Colombians and Peruvians, between 2003 and 2006, 733,413 Colombian nationals and 527,459 Peruvian nationals arrived in Ecuador, and 507,521 Colombians and 261,195 Peruvians left Ecuador, leaving a difference of 225,892 Colombians and 266,264 Peruvians, who, in principle, still reside in Ecuador.

20. With regard to emigration, according to information provided by the Department of Migration, between 2003 and 2006, 2,589,527 Ecuadorians left the country. Of these, 2,248,104 persons returned, leaving a difference of 341,422 Ecuadorians who, in principle, still reside abroad, 146,426 of whom are women.

21. It is important to note that the information provided by the Department of Migration is indicative in nature, since it includes only arrivals and departures recorded at locations authorized for regular migratory movements.<sup>7</sup>

**Table 1**

**Total foreigners**

| Year  | Departures | Arrivals  | Balance |
|-------|------------|-----------|---------|
| 2003  | 486 292    | 628 586   | 142 294 |
| 2004  | 639 626    | 774 150   | 134 524 |
| 2005  | 683 812    | 860 784   | 176 972 |
| 2006  | 785 469    | 831 257   | 45 788  |
| Total | 2 595 199  | 3 094 777 | 499 578 |

*Source:* Department of Migration.

**Table 2**

| Year  | Colombian nationals |          |         | Peruvian nationals |          |         |
|-------|---------------------|----------|---------|--------------------|----------|---------|
|       | Departures          | Arrivals | Balance | Departures         | Arrivals | Balance |
| 2003  | 93 305              | 205 230  | 111 925 | 23 353             | 35 318   | 11 965  |
| 2004  | 133 778             | 188 490  | 54 712  | 81 284             | 190 598  | 109 314 |
| 2005  | 124 763             | 164 123  | 39 360  | 83 414             | 207 743  | 124 329 |
| 2006  | 155 675             | 175 570  | 19 895  | 73 144             | 93 800   | 20 656  |
| Total | 507 521             | 733 413  | 225 892 | 261 195            | 527 459  | 266 264 |

*Source:* Department of Migration.

<sup>7</sup> Information provided by the Department of Migration by electronic mail on 14 June 2007.



**Table 3**  
**Total number of Ecuadorians**

| Year  | Departures | Arrivals  | Balance |
|-------|------------|-----------|---------|
| 2003  | 581 401    | 456 295   | 125 106 |
| 2004  | 606 494    | 536 779   | 69 715  |
| 2005  | 660 799    | 598 722   | 62 077  |
| 2006  | 740 833    | 656 309   | 84 524  |
| Total | 2 589 527  | 2 248 105 | 341 422 |

*Source:* Department of Migration.

**Table 4**  
**Emigration by sex**

| Year  | Women      |           |         | Men        |           |         |
|-------|------------|-----------|---------|------------|-----------|---------|
|       | Departures | Arrivals  | Balance | Departures | Arrivals  | Balance |
| 2003  | 268 513    | 214 020   | 54 493  | 312 888    | 242 275   | 70 613  |
| 2004  | 297 991    | 264 493   | 33 498  | 308 503    | 272 286   | 36 217  |
| 2005  | 305 181    | 280 824   | 24 357  | 355 618    | 317 898   | 37 720  |
| 2006  | 359 247    | 325 169   | 34 078  | 381 586    | 331 140   | 50 446  |
| Total | 1 230 932  | 1 084 506 | 146 426 | 1 358 595  | 1 163 599 | 194 996 |

*Source:* Department of Migration.

**Please provide further information on measures taken for the dissemination and promotion of the Convention. Please also indicate whether specific training programmes on the Convention are implemented for relevant public officials, such as border police officers and social workers, but also judges, prosecutors and relevant government officials.**

22. The Office of the Under-Secretary for Migration and Consular Relations in the Ministry of Foreign Affairs, recognizing the need to ensure the broadest possible dissemination of information on the rights of migrants, sponsored the publication of a “Brief Guide on the Status and Employment of Aliens”, which was prepared by the Trade Union Institute for Development Cooperation (ISCOD) and which summarizes foreigners’ rights as recognized in the 1978 Spanish Constitution, international instruments and Spain’s Aliens Act. The Office also received assistance from the Italian NGO, Association for International Cooperation and Humanitarian Aid (ALISEI), in distributing the guide “Living and Working in Spain and Italy”, which was published with financial assistance from the European Union and contains regulations on residence and employment in those countries, as well as the addresses of humanitarian institutions to which migrants can turn in case of need.

23. The Ministry of Foreign Affairs, Trade and Integration has taken steps to disseminate the principles of the Convention nationwide. It should be noted that various meetings have been held in the cities of Cuenca, Guayaquil, Cañar, Pasaje, Portoviejo, Guaranda and Ambato with the aim of providing information on the rights of migrant workers. Some of these rights have been

incorporated into efforts to implement co-development projects including: the Caña-Murcia project; the Agreement to regularize the employment and migration situation of nationals of Ecuador and Peru in the extended border integration zone; the processes for recruiting Ecuadorian workers under the agreement between Ecuador and Spain concerning the regulation of migratory flows; and the efforts and coordination needed to organize the return of hundreds of Ecuadorians stranded by the airline Air Madrid in Spain - a private matter that is being handled by the State. The participation of civil society in the meetings of the round tables on labour migration that have been taking place since 2004 should also be mentioned.

24. The Ministry of Foreign Affairs, with the participation of civil-society organizations and government agencies, organized several technical consultations in order to develop a Government agenda for migration and development, which will help to establish the main components of Ecuadorian migration policy to be disseminated through various national and international forums.

25. This initiative by the Ministry of Foreign Affairs, with the participation of the National Secretariat for Migrants (SENAMI) and with technical assistance provided by the International Organization for Migration (IOM), will help to identify the priorities and specificities that should characterize a Government agenda for migration and development, whose chief thrusts are the promotion and protection of the rights of migrants, including in particular the notion that migrants are not to be treated as criminals, the promotion of development and co-development efforts, with the involvement of countries of immigrants' destination, and incentives to ensure that remittances are transferred through formal channels and used for productive projects.

26. Participants in these activities include, in addition, migrants' associations, international cooperation agencies and organizations, and government officials, including from regional governments, in particular the municipalities of Quito, Cuenca and Saraguro, which have adopted innovative approaches in the areas of migration and development.

27. Prior to the workshops, consultations were held with all provincial governments in the country and with diplomatic missions and consular offices abroad. The workshops will incorporate the objectives, strategies and cross-cutting themes contained in the National Foreign Policy Plan (PLANEX) for the period 2006-2020.<sup>8</sup>

28. Nevertheless, these efforts to disseminate the Convention have not been accompanied by a training programme on the text of the Convention for all staff of the migration police, judges and other officials competent in this area, and it is becoming increasingly clear that this is necessary.<sup>9</sup> Some officials from these institutions have attended individual training courses on the topic, but there is no comprehensive training programme.

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<sup>8</sup> Information provided by the Office of the Under-Secretary for Migration and Consular Affairs, Memorandum No. 302-2007, 25 June 2007.

<sup>9</sup> Information provided on 14 June 2007 by the Director of the Department of Migration by electronic mail.

**With respect to article 37 of the Migration Act, please clarify whether it is an offence to enter Ecuador in an undocumented or irregular situation. If so, please specify the nature of the offence and the sanctions imposed.**

29. According to information provided by the Department of Migration, entering Ecuador without passing through migration controls at authorized ports, airports and border posts is not a serious offence, but rather a contravention of migration regulations. As stipulated in article 19, section I, of the Codification of the Migration Act, being in an irregular situation is grounds for deportation. Such contraventions are adjudicated by police commissioners and are punished by deportation, i.e. expulsion from Ecuador to the country from which the individual came prior to entering Ecuador, to the country from which he or she embarked for Ecuador, to the country of origin, to the country of domicile prior to entry, or to another country that accepts the individual.<sup>10</sup>

30. When a deportation order cannot be executed because it has been issued against a stateless person or a person lacking identity papers, or for any other substantiated reason, the police commissioner in charge of the case is required to bring the individual before the appropriate criminal court in order to replace pretrial detention with one of the alternative measures prescribed in article 171 of the Code of Criminal Procedure, pending execution of the order. If the deportation order is not implemented within three years, the person's stay in the country becomes legal.

31. The Ecuadorian delegation that participated in the Global Forum on Migration and Development urged the international community to ensure that contraventions of migration regulations are considered in every country as administrative, not criminal, matters, in keeping with the principle that migrants should not be treated as criminals.

**Please inform the Committee on:**

**The implementation of the “*Plan Nacional para combatir la Trata y el Tráfico Ilegal de Migrantes, explotación sexual laboral y otros modos de explotación, y prostitución de mujeres, niños, niñas y adolescentes, pornografía infantil y corrupción de menores*”. In this respect, please also indicate whether specific budget, as well as human, resources are allocated for the implementation of this plan.**

32. The National Plan to Combat Trafficking in Persons entered into force in October 2006 and targets three main areas: (1) Prevention; (2) Investigation, punishment and protection; and (3) Redress and recovery of victims' rights.

33. Executive Decree No. 1823, which was issued on 12 October 2006, entrusts the execution, monitoring, control, follow-up and evaluation of the above Plan to the Ministry of the Interior and Police, the Ministry of Foreign Affairs, the Ministry of Social Welfare, the National Council for Children and Adolescents, the Ministry of Labour and Employment, the Office of the Public

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<sup>10</sup> Information provided by the Director of the Department of Migration, by electronic mail dated 14 June 2007.

Prosecutor and the National Institute for Children and the Family. It also calls on State institutions and civil-society organizations involved in efforts to combat human trafficking to take part in achieving the Plan's objectives. Accordingly, the Plan relies on the human resources of the above-mentioned institutions.

34. In addition, a draft executive decree for the purpose of establishing a technical secretariat for the commission, which would be a permanent body responsible for issuing opinions on specific topics, has been submitted. There are also plans to set up a working group for each targeted area and specialized groups for each area of work.

35. The budget is funded from the economic resources that each institution is able to contribute. The National Council for Children and Adolescents (CNNA) has indicated, for example, that it has a specific budget allocation for implementing the Plan. In addition, resources are provided through international cooperation, which has responded very favourably to this project. In principle, the Inter-American Development Bank will contribute \$150,000.

**The activities of the “*Mesa de Trabajo sobre Migraciones Laborales*” and especially on the status of the draft executive decree for the creation of a National Council for Labour Migration mentioned in paragraph 102 (a) of the State party's report.**

36. The Round Table on Labour Migration assists in the formulation of public policies on migration, focusing on human rights, with the participation of civil society, international organizations and public institutions.

37. The draft decree on the establishment of the National Council for Labour Migration resulted from a process of dialogue and consultation between the Government, through the Ministry of Labour, and the Round Table on Labour Migration. The draft was presented to the President during the administration of Dr. Alfredo Palacio; however, no action was taken on it, and the Council was consequently not established.<sup>11</sup>

**The mandate, the role, the composition and the function of the Consultative Council on Migration Policy.<sup>12</sup>**

38. The Aliens Act was promulgated by means of Executive Decree No. 1897. RO/382 of 30 December 1971. It clearly sets out the information requested by the Committee on the role and the composition of the Consultative Council on Migration Policy, whose powers were confirmed in the Codification of the Aliens Act, published in RO. No. 454 of 4 November 2004. A number of articles are transcribed below:

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<sup>11</sup> Information provided by the Under-Secretary for Migration and Consular Relations in letter No. 302-2007, on 25 June 2007.

<sup>12</sup> Information provided by the Under-Secretary for Migration and Consular Relations in letter No. 302-2007, on 25 June 2007.

39. “Art. 6. - In order to formulate and establish general migration policies and to regulate foreigners’ residence and obligations in Ecuador, the Consultative Council on Migration Policy, which is an advisory body attached to the Ministry of the Interior, Religious Organizations, Police and Municipalities, shall be composed of:

- (i) The Director-General for Aliens, or his or her representative, who shall act as chairperson;
- (ii) The Director of the Department of Migration, or his or her representative;
- (iii) The Director of Migration Affairs in the Ministry of Foreign Affairs, or his or her representative.

The legal adviser of the Office of the Director-General for Aliens shall act as Secretary of the Council.”

40. “Art. 7. - The Consultative Council on Migration Policy shall have the following basic duties and functions:

(a) To review decisions to refuse or revoke immigrant or non-immigrant visas taken by the Office of the Director-General for Aliens in the Ministry of the Interior, Religious Organizations, Police and Municipalities and by the Department of Migration Affairs in the Ministry of Foreign Affairs;

(b) To deliver an opinion on proposals for organized immigration or draft government migration treaties or agreements, as well as to analyse those currently in force, in order to recommend their extension, revision or revocation;

(c) To promote population resettlement from over-populated to less densely populated areas;

(d) To promote the establishment of strong concentrations of Ecuadorian nationals in sparsely populated border areas;

(e) To encourage the repatriation of Ecuadorians by facilitating their resettlement in locations and occupations suited to their special skills;

(f) To recommend measures aimed at restricting the emigration of nationals when this is in the public interest;

(g) To supervise and coordinate the administrative development of State bodies that implement programmes related to aliens and migration;

(h) Other duties and functions stipulated in the law and related regulations.

The advisers to the Consultative Council on Migration Policy shall be the Director of Foreign Investments of the Ministry of Foreign Trade, Industrialization, Fisheries and Competitiveness, or the body acting on its behalf, and the Director of Employment and Human Resources in the Ministry of Labour and Human Resources. These officials shall attend the meetings of the Council and may speak but not vote.

The decisions adopted by the Consultative Council on Migration Policy in pursuance of subparagraph (a) of this article shall be binding.

Regular sessions shall be held once a month and special sessions shall be held at any time they are convened.”

41. As described above, the Consultative Council on Migration Policy is an advisory body attached to the Ministry of the Interior, Religious Organizations, Police and Municipalities. It is charged with formulating and establishing general migration policies and regulating foreigners’ residence and obligations in Ecuador. To that end, it will conduct an in-depth study of the overall framework of Ecuador’s migration policy against the background of the new social, political and economic realities that shape today’s world.<sup>13</sup>

**Please explain whether the national legislation provides for the application of the Convention to refugees and stateless persons (article 3 (d) of the Convention).**

42. According to information provided by the Refugee Office, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families does not apply to refugees or to stateless persons in Ecuador. However, there are other international instruments in force in the country, such as the American Convention on Human Rights, which, in articles 22 and 24, grants refugees the right to asylum and to equality before the law without discrimination. This right is also set out in article 26 of the International Covenant on Civil and Political Rights.

43. The 1951 Convention relating to the Status of Refugees is also applied in Ecuador. This instrument establishes minimum basic rules for the treatment of refugees and, in article 3, prohibits discrimination on the basis of race, religion or country of origin, which is consistent with the Ecuadorian Constitution. It also establishes the obligation of States to protect refugees.

44. With regard to domestic legislation, articles 1, 2, 3, 4, 5 and 7 of the Ecuadorian Labour Code establish employment as a universal right; hence, these rules apply both to Ecuadorians and to foreigners who reside in Ecuador. Moreover, articles 4 and 12 of the Aliens Act, and article 42 of the related regulations, establish the special status of refugees, as a result of which efforts are made to facilitate their employment in the country.

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<sup>13</sup> Information provided by the Ministry of the Interior in letter No. 0321-DGE-07 of 21 June 2007.

45. Decree No. 3301 of 12 May 1992 promulgates the regulations for applying in Ecuador the provisions of the 1951 Convention relating to the Status of Refugees.

46. Ministerial decision No. 452, issued on 23 November 2006, provides for the establishment of employment cards for foreigners who reside in our country and who have refugee status. These cards are issued free of charge by the Department of Employment and Human Resources on presentation of an application and a refugee card, which is issued by the Ministry of Foreign Affairs.

47. The domestic legislation concerning refugees also includes:

- A ministerial decision that provides for the delivery of health care to refugees and asylum-seekers in hospitals, health centres and health posts run by the Ministry of Public Health;
- Ministerial decision No. 455, which contains regulations governing access to the Ecuadorian education system for refugees. This decision enables child and adolescent refugees and/or asylum-seekers who lack the necessary documentation to substantiate their academic level to enter the Ecuadorian education system at a level corresponding to their knowledge, skills and age, without having to present documents from their country of origin, but solely on presentation of the temporary asylum-seeker certificate.

48. It also provides for the possibility of appearing in person to be tested for placement in grades up to grade seven of basic education, or to be certified as having completed primary school, under the terms of article 255 of the General Regulations pursuant to the Education Act. Individuals between 13 and 15 years old may appear in person to be tested for placement in ninth or tenth grade of basic education, while 15-to-18-year-olds may test for enrolment in second or third year of secondary school, or to obtain a secondary school diploma.

49. In addition, it provides the opportunity to pursue independent studies in conformity with Ecuadorian legislation and grants the same rights and duties as those granted to the national student population. It charges the School System Department and the provincial departments of education with giving effect to the ministerial decision.

50. The Ministry of Education has publicized this decision and monitored its application, mainly in the border provinces. For the purposes of preparing the present report, it consulted and received favourable replies on the application of the decision from Esmeraldas, Carchi, Sucumbíos, Orellana, Loja and Zamora Chinchipe.

51. Lastly, we wish to inform the Committee that Ecuador recognizes the importance of the various guidelines on the international protection of refugees issued by the Office of the United Nations High Commissioner for Refugees (UNHCR). Accordingly, following his last visit to Ecuador in February 2007, Mr. António Guterres, United Nations High Commissioner for Refugees, expressed his appreciation for the goodwill shown by the central Government in keeping its doors open to persons who need international protection, in spite of the difficult social and economic situation in Ecuador.

**With reference to article 12 of the Aliens Act, please clarify whether and how the provisions of the Convention apply to individuals considered as “no inmigrante”.**

52. In Ecuador, the term “no inmigrante” or “temporary immigrant” refers to any alien resident in another State who enters Ecuador lawfully and in accordance with the rules, with no intention of settling in the country, for reasons listed in each prescribed situation. Hence, some articles of the Convention that grant fundamental rights do apply to temporary immigrants, so long as persons falling into this category remain in the country.

## **II. INFORMATION RELATING TO EACH OF THE ARTICLES OF THE CONVENTION**

### **A. General principles**

**Please clarify the status of the Convention within the State party’s legal system and explain what would happen in case of conflict between the provisions of the Convention and the national legislation, including the Constitution. Furthermore, please provide information and examples on cases, if any, where the provisions of the Convention have been invoked in Court.**

53. Article 163 of the Constitution provides that “the norms contained in international treaties and conventions, once promulgated in the *Official Gazette*, shall form part of the domestic legal system and shall take precedence over laws and other norms of a lower status”; in other words, in the Ecuadorian legal system the Constitution is the supreme law, followed by international conventions in force and then by Organic Acts and other laws.

54. It would be very difficult for a conflict to arise between the provisions of the Convention and the Constitution, given the domestic procedure that takes place in order for an international human rights convention to become enforceable, as in the case of the Convention, which received a favourable opinion by the Constitutional Court before it was ratified.

55. The National Council of the Judiciary has reported that judicial officials generally abide by the principles of the Convention in the administration of justice, but have not invoked any of its articles in particular.<sup>14</sup>

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<sup>14</sup> Information provided by Dr. Gustavo Donoso Mena, Executive Director of the National Council of the Judiciary, in letter No. 821-DE-CNJ-07 of 4 July 2007.



**Please inform the Committee about measures taken to combat what appear to be discriminatory attitudes towards migrant workers and members of their families and to ensure that they are not socially stigmatized. In this respect, please comment on how to avoid that asking for the certificate of criminal record (*pasado judicial*) of the Colombian migrants exclusively, may contribute to their stigmatization and stereotyping. In addition, please provide more information on the impact and consequences of this measure on migration flows.**

56. The certificate of criminal record (*pasado judicial*) is a document issued by the Colombian Department of National Security, an intelligence agency reporting to the executive branch; it contains a record of any action by the police or judicial authorities concerning an individual.

57. This requirement was introduced as from 1 May 2004, following the Joint Declaration by the Presidents of Ecuador and Colombia on 17 March of the same year. It should be noted that it was not imposed by Ecuador, but stems from a bilateral agreement implementing the measure (record of the Second Meeting of the Ecuador-Colombia Special Binational Commission on Migration Affairs).

58. Opinions No. 003/04 and No. 004/04 of the Consultative Council on Migration Policy provide that the following shall be exempted from the requirement to produce the certificate of criminal record: Colombians travelling on a permanent immigration or temporary visa, minors, persons recognized as having refugee status, members of flight crews, Colombian government or regional officials, diplomatic officials and members of international organizations, and persons entering the country on holidays or to attend cultural, sporting or artistic events. The Council also exempted Colombian citizens in transit through the town of Tulcán from the requirement to produce the certificate.

59. It should be noted that the immigration law of most countries requires visa applicants to provide a certificate of criminal record or police record. This measure is applied to Ecuadorians in Spain, the United States of America, Mexico and other countries. In these cases, the consular authority even reserves the right to grant or deny the visa on public security grounds.

60. Moreover, under the agreement concluded between Ecuador and Peru on the regularization of frontier workers, presentation of the police record (Ecuador) or certificate of criminal record (Peru) is also required in order to qualify for regularization.

61. The requirement to produce the certificate of criminal record has not had a significant impact on migration flows, as may be seen from the very slight variation since 2003: 205,230 Colombian citizens entered Ecuador in 2003 (before the requirement was introduced), whereas the figure for 2004 (the requirement having been in place since May 2004) was 188,490, and that for 2005 was 164,123.<sup>15</sup>

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<sup>15</sup> Information provided by the Director of the Department of Migration by electronic mail on 14 June 2007.

62. Notwithstanding the above, in the view of the Ministry of the Interior this measure has had a negative impact on attitudes among the Ecuadorian population, for example in the form of rejection of Colombian immigrants and potentially discriminatory checks.<sup>16</sup>

**Please explain how undocumented migrant workers and members of their families can in practice exercise their right to an effective remedy in accordance with article 83 of the Convention and specify which judicial, administrative, legislative or other authorities are competent to receive complaints of alleged violations of migrant workers' rights.**

63. As stated previously, the Constitution guarantees to all its inhabitants the enjoyment of the rights set forth in the Constitution and in the declarations, covenants, agreements and other international instruments in force. The Constitution also provides that the rights guaranteed shall be applicable by and before any judge, court or authority; migrant workers and their families thus have every right to seek redress for violations of their rights before the judicial and administrative authorities.

64. As regards labour law in particular, workers may file complaints with the labour inspectorates and, within the judicial system, with the labour courts; they may also seek a resolution through mediation.

65. As the institution guaranteeing the rights set forth in the Constitution, the Office of the Ombudsman can also take action to protect migrant workers in a regular or an irregular situation, through *amparo* proceedings, due process proceedings, mediation and special measures for the protection of these persons' integrity and legal security.

66. The Office of the Ombudsman reports that it has received complaints from persons seeking refuge who have had problems with police officers: not having their documents on them, their status was not respected and they were detained in order to be deported. In these cases, the Office of the Ombudsman has intervened and obtained their release from the police commissioner, once the status of the detainees was confirmed by the Ministry of Foreign Affairs.

67. The Office of the Ombudsman has also handled cases of foreign citizens who have lost their documents, helping them to obtain a blue passport: normally reserved for refugees, this passport is usually issued in Ecuador not only to refugees, but to individuals facing difficulties in obtaining travel documents.

68. Concerning migrant workers, the Office of the Ombudsman reports that in 2001 it intervened in the case of a security enterprise employing Colombian citizens which withheld

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<sup>16</sup> Information provided by the Ministry of the Interior in letter No. 115-DDHH-SCP-HVM of 22 June 2007.

their documents. The enterprise took advantage of their needy and precarious situation to pay less than minimum wage. The matter was referred to the labour inspectorate and an appropriate solution found.<sup>17</sup>

69. According to information from the judiciary, there is no specific mechanism in place to ensure an effective remedy in accordance with article 83 of the Convention. However, when a party considers that its interests have been affected by a violation, a determination should be made whether the violation was judicial or administrative in nature, so that the appropriate procedure can be initiated.

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

**Please clarify whether there exists an independent review, administrative or judicial, against exclusion, expulsion or deportation orders, and if so, how it is implemented in practice.**

70. There is no independent review, administrative or judicial, against exclusion, expulsion or deportation; the Minister of the Interior holds administrative consultations only in cases of decisions not to deport issued by the police commissioner, which are then either upheld or overturned, based on the merits.<sup>18</sup>

**Please indicate the number of migrants currently held in administrative or judicial custody for violations of provisions relating to migration, as well as the length of their detention. In this respect, with reference to article 17, paragraph 3, of the Convention, please also indicate the steps taken to ensure that migrant workers and members of their families detained for violations of provisions relating to migration are held separately from convicted persons or persons detained pending trial. In case of detention, are there separate locations for migrant workers and members of their families different from where other detainees are held?**

71. The Department of Social Rehabilitation reports that a total of nine persons were being held in detention in May 2007 for migration violations in the social rehabilitation centres of Ibarra, Tulcán, Macas, provisional detention centre No. 1 of Quito and Loja.

72. The Department of Social Rehabilitation points out that when persons arrested for violation of provisions relating to migration are held in penal institutions, an effort is made to hold them in

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<sup>17</sup> Information provided by Dr. Francisco Bonilla, Office of the Ombudsman, by electronic mail on 30 July 2007.

<sup>18</sup> Information provided by Dr. Magdalena Molina, Under-Secretary for Policy Coordination, Ministry of the Interior, by letter No. 2007-1270-AJU-GGV of 23 July 2007.

cells separately from convicted persons considered to be dangerous. However, there are no separate detention facilities, except for the provisional detention centres in Quito, Manabí and Guayas.<sup>19</sup>

73. The Department of Migration has provided the following statistics for 2006 on the number of persons detained and the reasons for their detention.

| Reason for detention      | Number of aliens detained |
|---------------------------|---------------------------|
| Illegal stay              | 82                        |
| Undocumented              | 191                       |
| Smuggling of migrants     | 0                         |
| Assuming a false identity | 3                         |
| Falsifying documents      | 10                        |
| False visas               | 1                         |
| Misuse of visa            | 41                        |
| False stamp               | 1                         |
| Fraud                     | 0                         |
| Other                     | 4                         |
| Total                     | 1 190                     |

**Please clarify the nature of the exit permit released by the Migration Service of the National Police mentioned in paragraph 69 (d) of the State party's report.<sup>20</sup>**

74. According to information provided by the Department of Migration,<sup>21</sup> all nationals and aliens are required to obtain an exit permit from the Migration Service, through its provincial and

<sup>19</sup> Information provided by the Director of the Department of Social Rehabilitation, Dr. Máximo Ortega Vintimilla, by letter No. DNRS-GP-186-2007 of 10 July 2007.

<sup>20</sup> Article 37 states that the following persons shall be considered to have committed a serious offence and shall be liable to a prison sentence of between six months and three years and a fine of between US\$ 400 and US\$ 4,000:

...

(d) Any individual who, in person or through a third party, supplies travel documentation to Ecuadorian citizens intending to live and work abroad, either by fraudulent means or without having obtained the relevant exit permit from the Migration Service of the National Police, shall be liable to ordinary short-term imprisonment for between three and six years, without prejudice to the provisions applicable in the case of a more serious offence such as forgery, which is described in title IV, chapter III, of the Criminal Code.

<sup>21</sup> Information provided by the Director of the Department of Migration by electronic mail on 14 June 2007.

local migration offices nationwide, with the exception of diplomats and people in transit, in accordance with articles 7 to 14 of the regulations issued under the Codification of the Migration Act.

75. The following documents are required in order to obtain an exit permit.

Ecuadorians:

- (i) A valid and current passport;
- (ii) Citizen's identity card (countries that do not require a passport);
- (iii) Visa to enter the country of destination (if necessary);
- (iv) Residence permit (for persons residing abroad);
- (v) Proof of having voted in the last elections;
- (vi) Vaccination certificate (if required).

76. The Constitutional Court has declared article 88 of the Compulsory Military Service Act unconstitutional, and therefore citizens who have not fulfilled their obligations under that Act will no longer be penalized by being denied an exit permit.

77. In addition, Decision 503 of the Cartagena Agreement provides, by way of exception, that foreign citizens residing in any of the Andean countries may be admitted to and enter member countries (Ecuador, Peru, Colombia, Bolivia, Venezuela) merely by presenting the following:

- (i) An alien registration card (*censo de extranjeros*);
- (ii) An identity card.

78. Special conditions are laid down in the law for exit permits of minors, both Ecuadorians and foreigners.

79. The Department of Migration has stated that the fact that the entries and exits of any Ecuadorian citizen have not been registered does not limit his or her right to travel, provided that person has met the requirements imposed by the receiving country.

**Please inform the Committee about any specific measures taken to protect undocumented migrants, particularly women, who are reportedly often subjected to abuses such as long workdays and suffer from discrimination in everyday life.**

80. According to information provided by the National Council for Women (CONAMU), since 2005 the Council has held consultations with other public bodies and civil-society organizations to promote public policies protecting migrant women as part of the Equal Opportunity Plan 2005-2009.

81. At the same time, the round table on labour migration, with the involvement of CONAMU, has integrated the gender dimension in public policies on migration. It has also started mainstreaming gender in promotion and impact activities for the design and implementation of policies for the protection of migrants' rights. The round table has a component on public policies and migrant women, under which a workshop on "Migrant women and public policies" was held in September 2006 by CONAMU, in coordination with FLACSO.

82. The workshop included three thematic working groups:

- (i) Migrant women, decent work and social reproduction;
- (ii) Regulatory framework and methods of enforceability of the rights of migrant women and their families;
- (iii) Immigrant and refugee women.

83. In addition to the institutions involved in the round table on labour migration of the Ministry of Labour and Employment, a number of social organizations from Quito, Loja, Cuenca, Riobamba, Lago Agrio and Sucumbíos participated in the workshop.

84. The outcome of this event has been publicized and submitted to the members of MTML as a basic proposal for formulating Ecuador's policies on this population. The outcome includes the determination of the bodies responsible for carrying out the proposed policies and programmes.

85. In addition, the Agreement to Regularize the Employment and Migration Situation of Nationals of Ecuador and Peru in the Extended Border Integration Region includes women's domestic work. This Agreement was disseminated in the main provinces to which it applies (El Oro, Loja, Azuay).

86. It was also proposed to develop focal groups in order to "identify the difficulties experienced by beneficiaries (irregular migrants) who have come forward in the current process of regularizing employment and migration".

87. CONAMU has drawn attention to the need to promote comprehensive programmes that integrate local policies for the prevention and elimination of gender-based violence and sexual exploitation.

88. In connection with the aforementioned process, and in the context of the implementation of the Equal Opportunities Plan 2005-2009, which establishes the need to promote specific activities to protect the rights of women in the northern border area, CONAMU requested funds - with positive results - from the Swedish International Development Authority (SIDA) in order to implement a gender impact programme in public policy in the local governments of Sucumbíos, Imbabura and Esmeraldas for a period of three years. This project, which is being drawn up, involves the design and implementation of a model social protection network, with emphasis on care for victims of domestic and sexual violence in the three provinces. The model, which is based on the specific conditions prevailing in the border area, will take a comprehensive approach to protection, which will include both Ecuadorian women and immigrant and refugee women.

**Please comment on reports according to which:**

**Migrants working in banana plantations, including children, work in hazardous conditions, and are, for example, exposed to toxic pesticides and fungicides and drink unsanitary water. In this respect, please also indicate whether steps have been taken to remedy this situation.**

89. According to information provided by the sectoral coordinator of Banano y Orgánicos, the Foro Social Bananero (FSB) was established in July 2003 within the National Committee for the Progressive Elimination of Child Labour (CONEPTI). This forum is headed by the Ministry of Labour and includes representatives from the Ministry of Social Welfare, the Ministry of Health, the Ministry of Education and the Ministry of Agriculture, and also representatives of banana exporters, producers and workers, and NGOs. The United Nations Children's Fund (UNICEF) and the International Labour Organization (ILO) participate as observers. The forum has two objectives:

- (i) The progressive elimination of child labour on banana plantations;
- (ii) Raising the standard of living of families in banana-growing areas.<sup>22</sup>

90. In this regard, the following social strategies were undertaken:

(a) Agreement with the Ministry of Labour on financial support to mobilize child labour inspectors in the banana-growing area;

(b) Cooperation agreement with two international projects financed by the United States Department of Labor - SOY and the Programme to Eliminate Child Labour, carried out by Dya.

The objective of the SOY project is to eliminate the employment of minors in banana- and flower-growing areas. The four-year project will end in September 2008.

The objective of the Dya project is to remove 500 boys, girls and adolescents from employment in the banana industry, and to prevent the employment of an additional 500; the project, which has been in operation since August 2005, is based on a comprehensive development strategy to transform the living conditions of minors;

(c) Alliance with the Office of the Under-Secretary for Education for the Coastal Region for the development of sex education and family planning programmes;

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<sup>22</sup> Information provided by María Antonieta Reyes, Sectoral Coordinator of Banano y Orgánicos, CORPEI, by electronic mail on 14 June 2007.

(d) Alliance with the National Federation of Food Industry Workers, Farmers and Free Indigenous Populations of Ecuador (FENACLE) and FSB to develop workshops on leadership, gender, the rights of children and adolescents, and development of microenterprises;

(e) Alliance and cooperation between Foro Social Bananero (FSB) and the LACT Project of Save the Children for the awareness-raising campaign “Eliminating child labour through art: An objective in our hands”;

(f) Cooperation alliance between CORPEI (Export and Investment Promotion Corporation) and AEBE (Association of Ecuadorian Banana Exporters) to finance certain FSB activities within the budget of the sectoral unit for banana export;

(g) Alliances with the municipalities of Naranjal, El Triunfo and El Guabo to establish the Cantonal Council for the Comprehensive Protection of Children and Adolescents, and to carry out activities under the “Soy Socialmente Responsable” project, which is being implemented by UNICEF and the SOY project;

(h) Incorporation of CORPEI as a member of the country coordination mechanism of the Global Fund to Fight AIDS, Tuberculosis and Malaria;

(i) Creation of 11 cantonal councils for the comprehensive protection of children and adolescents in municipalities as part of the National System for the Integral Protection of Children and Adolescents, within the framework of the strategic alliance between FSB and SOY!.

91. The Foro Social Bananero has reported that today there are no children working on large banana plantations; children who do work are employed on family plantations of less than 30 hectares. This information is based on data supplied by child labour inspectorates of the Office of the Under-Secretary for Labour for the Coastal Area. Unfortunately, no precise figures are available.

92. In addition, the Ministry of Labour has established a child labour inspection and monitoring system in order to have inspectors who specialize in child labour and who can ensure compliance with the legal provisions concerning working conditions for adolescents, and respect for good employment practices. The inspection and monitoring system involves various stages: awareness-raising, consultation and information, on-site inspection, agreements and, if the case warrants it, sanctions. This process is supported by civil society monitors. If children are found to be under the age established by law, social protection is coordinated with the bodies responsible in this area.

93. The Ministry of Labour has also held, on an ongoing basis, training and awareness-raising workshops for the following social groups:

(i) Training of child labour inspectors;

(ii) Training workshop for civil-society monitors;



- (iii) Training workshop and strengthening of the inspection system;
- (iv) Workshop for validating the National Plan to Eliminate Child Labour, in coordination with ILO.<sup>23</sup>

94. In addition, on Monday, 21 May 2007, the Ministry of Labour and Employment, FENACLE, ILO, the Programa Proniño de la Fundación Telefónica Movistar, the National Institute for Children and the Family (INNFA) and the Centre for Development and Self-Management presented the next stage of the Programme for the Elimination of Child Labour on banana plantations. The Programme coordinates the efforts of workers, the State and entrepreneurs with a view to eliminating child labour in the banana industry. The Programme will stop or prevent 1,750 children and adolescents from engaging in dangerous work on banana plantations in the provinces of Guayas, El Oro and Los Ríos, through a strategy that promotes education, decent adult employment, the implementation of supplementary income alternatives and the formulation of trade union, labour union and sectoral policies.

95. All of the aforementioned measures are aimed at the progressive elimination of child labour in general and include all children and adolescents living in Ecuador, regardless of their nationality.

96. The following bodies currently exist in the banana-producing provinces to protect the rights of children and adolescents:

| Province   | Number of cantons | Cantonal councils for children and adolescents | Cantonal protection boards |
|------------|-------------------|--|----------------------------|
| Esmeraldas | 7                 | 3  | 0                          |
| Guayas     | 28                | 12   | 0                          |
| Los Ríos   | 12                | 2  | 0                          |
| El Oro     | 14                | 7  | 4                          |
| Total      | 61                | 24   | 4                          |
| Per cent   | 100               | 39.34  | 6.55                       |

97. In the view of the National Council for Children and Adolescents,<sup>24</sup> the small number of bodies responsible for protecting children's rights is a weakness that makes it difficult to guarantee the rights of children and adolescents in these provinces. Fortunately, the Government's decision to boost the protection system made it possible to implement the social

<sup>23</sup> Information provided by Dr. Jorge León, Director of Employment, Ministry of Labour, by electronic mail.

<sup>24</sup> Information provided in letter No. 578-CNNA-SEN-2007 of 11 July 2007, signed by Sara Oviedo, Executive Secretary of the National Council for Children and Adolescents.

agenda for children and adolescents, entitled “Juntos por la equidad desde el principio de la vida” (“Together for fairness from the start of life”), the aim of which is to increase the State’s involvement in ensuring appropriate and stable economic resources and protection services in all of Ecuador’s cantons for all children and adolescents living in the country. The social agenda is in the implementation stage.

**Migrant children are increasingly involved in prostitution, in particular in Lago Agrio in the province of Sucumbíos. In this respect, please also indicate whether steps have been taken to remedy this situation.**

98. According to information provided by the National Council for Children and Adolescents concerning child prostitution in Lago Agrio in the province of Sucumbíos, some cases involve female children and adolescents who arrive from Colombia, lured by the promise of obtaining work in Lago Agrio, recruited by persons who belong to networks that help them to enter Ecuador and who provide them with free accommodation for the first few days after their arrival, after which the girls are encouraged to work for their daily living expenses. The Office of the United Nations High Commissioner for Refugees (UNHCR) indicates that, while they are not always encouraged to provide sexual services, this option is seen to be the most viable, given the profile of these migrant girls, their urgent economic needs and the local situation, where there is a significant demand for sexual services.<sup>25</sup>

99. In such cases, female children and adolescents are offered “resettlement” as a durable solution; that is, they are taken to another host country before their situation deteriorates. UNHCR reports that, from January 2003 to the date of this report, 152 refugees have been resettled from Lago Agrio; of that number, 38 correspond to the aforementioned profiles. These cases include three girls identified by UNHCR as being involved in sexual exploitation.

100. In the opinion of DINAPEN,<sup>26</sup> sufficient measures have not been taken in the province of Sucumbíos to address the problem of child prostitution. DINAPEN does not have an adequate budget or infrastructure or sufficient staff to protect the entire child population; it has seven police officers and one second lieutenant (a total of eight) for a population of 128,512. Nevertheless, it should be pointed out that all members of the National Police, even if they are not members of DINAPEN, are trained to detect any irregular situation involving children and adolescents, including child prostitution.

101. In addition, it is essential that this border province have a centre to protect victims of sexual exploitation, and that awareness-raising campaigns be conducted among citizens, who often assume that child prostitution is something normal and do not get involved in the problem. Moreover, measures must be taken to ensure that fear does not prevent the population from reporting such cases to the competent authorities.

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<sup>25</sup> Information provided in letter No. 578-CNNA-SEN-2007 of 11 July 2007, signed by Sara Oviedo, Executive Secretary of the National Council for Children and Adolescents.

<sup>26</sup> Information provided by Mr. Julio Pazmiño of DINAPEN at a meeting held on Wednesday, 18 July 2007, at the Ministry of Foreign Affairs.

102. There are no disaggregated statistics on migrant children involved in prostitution in Sucumbíos. Although the Anti-Trafficking Unit established by DINAPEN in 2004 is based in Pichincha, it operates in all of Ecuador's provinces, but does not have specific data. DINAPEN is taking steps to establish an office of the Anti-Trafficking Unit in Sucumbíos and to set up a special shelter for girls and adolescents rescued from prostitution.

103. The National Council for Children has provided information concerning the following measures taken to eliminate child prostitution:

(a) Reform of the Criminal Code in 2005, which incorporated criminal offences, such as child pornography, that had not previously existed, and toughened penalties in other cases involving the sexual exploitation of minors;

(b) Preventive guidelines have been distributed to parents concerning the safety of children and adolescents in order to curb the rise in the number of violations of their rights and to encourage citizens to participate directly and effectively in protecting the physical and mental integrity of their sons and daughters;

(c) Training courses on trafficking in persons, including children and adolescents, have been held in various educational establishments and institutions; at such courses, children and young people have been made aware of their rights under the Children and Adolescents Code and of the fact that they should not be used for work, trafficked, sexually exploited or enslaved;

(d) Another measure taken by Ecuador is the implementation of the National Plan against Trafficking in Persons, through two projects administered by the National Council for Children and Adolescents and financed by UNICEF and Save the Children Spain, involving the preparation of a model for providing care to victims of trafficking and the operation of comprehensive protection networks that coordinate public and private services to care for and protect victims. These measures complement the activities undertaken by the special protection network operating in Lago Agrio, and include a new project being carried out by ILO. The measures planned by the National Council for Children and Adolescents are beginning to be implemented (July 2007);

(e) At the initiative of the National Council for Children and Adolescents the President of Ecuador, the Ministry of the Interior and the Ministry of Social Welfare signed an agreement to strengthen the technical and operational capacity of DINAPEN, principally because of the worrying role being played by the Police in combating trafficking networks in Lago Agrio and other Ecuadorian towns.

This measure is still in the preparation stage; it is hoped that it will become operational before the end of 2007. With this measure, Ecuador will ensure the availability of continuing and appropriate funding for protection services;

(f) In order to implement the National Plan of Action against Trafficking in Persons, an agreement has been signed with the Inter-American Development Bank for the financing of a project to strengthen Ecuador's capacity to respond to such offences. The International

Organization for Migration (IOM) has also offered its support in this regard, and arrangements are being made for its participation in the financing of various measures, such as methodologies, protocols and training, under the National Plan of Action.

104. In the view of CNNA, for many years the authorities have failed to intervene with political decisiveness and in a timely manner to eliminate these offences. However, the new administration has begun to take measures that will help to strengthen State action. The principal measure, as has been mentioned, is the creation and operation of a national decentralized system for the integral protection of children and adolescents.<sup>27</sup>

**With reference to article 23 of the Convention, please indicate what measures have been taken to ensure that migrant workers and members of their families have effective recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin, in particular, to provide assistance to those of them in detention.**

105. The Foreign Service Statute of Ecuador provides that one of the main functions of diplomatic and consular missions is to provide protection for Ecuadorians abroad. More specifically, these functions are carried out by consulates, since the Vienna Convention on Consular Relations recognizes that one of the functions of consular offices is to protect nationals, both individuals and bodies corporate, to help and assist them, to safeguard their interests, particularly the interests of minors and other persons lacking full capacity, and to represent them before the tribunals and other authorities of the receiving State.

106. Through the Office of the Under-Secretary for Migration and Consular Relations, the Ministry of Foreign Affairs, Trade and Integration has issued new instructions to diplomatic and consular missions to give priority to the scrupulous monitoring of respect for the human rights of Ecuadorian emigrants and their families, as guaranteed under international agreements, as well as to compliance with legislation that protects the rights of immigrants in receiving States.

107. Consulates maintain permanent and direct contact with organizations of Ecuadorians in their respective jurisdictions and, when such organizations do not exist, support their establishment, with legal status, on the basis of the legislation of the receiving State.

108. Some consulates, in close cooperation with the community of Ecuadorians living abroad, have established services whereby volunteers provide assistance to Ecuadorian emigrants in various matters.

109. Consular offices also maintain close relations with NGOs, churches, trade unions and other humanitarian organizations in their respective jurisdictions in order to ensure that they provide migrants - free of charge or for nominal fees - with humanitarian assistance, medical and psychological care, education, legal advice and other services of interest to such persons.

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<sup>27</sup> Information provided in letter No. 578-CNNA-SEN-2007 of 11 July 2007, signed by Sara Oviedo, Executive Secretary of the National Council for Children and Adolescents.

110. In most cases, emigrants are detained for not complying with the legal requirements for their transit through, entry into or residence in a particular country. Ecuadorian consulates follow such proceedings from the beginning since, in accordance with the provisions of the Vienna Convention on Consular Relations, they must be informed without delay by the authorities of the receiving State when an Ecuadorian citizen is detained.

111. Consequently, and in exercise of their right, consular representatives go to prisons to interview each of the prisoners individually, take their identity data in order to provide information to their families, assess the conditions in which the prisoners are being held and, if necessary, demand the provision of appropriate medical assistance, ascertain the reasons for their arrest, hold interviews with officially appointed lawyers, ensure the proper conduct of judicial proceedings, make sure that bail procedures are carried out in conditions that are most favourable to the detainees, encourage the migration authorities to carry out repatriations in a dignified manner, with due respect for the inalienable human rights of the persons concerned and, lastly, issue safe-conduct cards for their return home. Consular representatives also ensure that the costs of repatriation are covered by the host countries, in accordance with international practice.

112. In addition, bearing in mind that each case must be considered individually, some consulates have succeeded in obtaining free legal advice, provided by Ecuadorian or foreign professionals, in matters relating to judicial proceedings.<sup>28</sup>

**With reference to article 25 of the Convention, please provide more detailed information on practical measures taken to ensure that all migrant workers enjoy equal treatment in respect of remuneration and other conditions of work such as, inter alia, overtime, hours of work, weekly rest, paid holidays, safety, health, termination of the employment relationship.**

113. In accordance with the Constitution of Ecuador, “foreigners shall enjoy the same rights as Ecuadorians, with the limitations set forth in the Constitution and the law”.

114. Consequently, all the rights contained in the Labour Code protect foreign nationals who provide services as employees in Ecuador.

115. Specifically, they enjoy equal treatment with regard to overtime, hours of work, obligatory rest time, social security, remuneration, termination of the employment relationship, and other conditions of employment.

116. Labour inspectors and other authorities are responsible for ensuring respect for workers’ rights, whether or not such workers are migrants.

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<sup>28</sup> Information provided by the Under-Secretary for Migration and Consular Relations in memorandum No. 302-2007 of 25 June 2007.

117. Moreover, there has been progress in the area of social security in the Andean Community. In accordance with Andean Labour Migration Instrument (decision 545) and the Andean Social Security Instrument, migrant workers can have the period that they were insured in their countries of origin recognized in the receiving country.

118. In this regard, the Ecuadorian Social Security Institute (IESS) has announced that it recently signed the Ibero-American Social Security Convention, which extends the social benefits offered by each member country to the immigrant workers that it hosts. In practice, it covers more than 97 per cent of all non-Ecuadorian workers residing in Ecuador. The Convention is in the implementation stage and will enter into full force in the coming months.

119. In addition, Ecuador has concluded bilateral agreements with Spain, Chile, Mexico and Uruguay to protect the social security of migrant workers in Ecuador. Work is currently under way to draft a new bilateral agreement with Chile that will broaden and facilitate the provision of benefits between the two countries.<sup>29</sup>

**Please indicate which bodies are responsible for providing the information required by article 33 of the Convention to foreign migrant workers in transit or residing in Ecuador.**

120. The State bodies responsible for providing the required information are:

- Ministry of the Interior and Police: Office of the Director-General for Aliens, General Police Administration;
- Ministry of Labour and Employment; Department of Employment and Human Resources, Department of Labour and regional offices;
- Ministry of Foreign Affairs, Trade and Integration: Office of the Under-Secretary for Migration Affairs, Department of Human Rights;
- Department of Migration;
- Ecuadorian Social Security Institute;
- Regional Under-Secretaries' offices;
- Provincial headquarters of the migration authorities;
- Provincial governments.

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<sup>29</sup> Information provided in letter No. 2259 of 12 July 2007, signed by Dr. Gonzalo Donoso, Director-General of IESS.

121. Various foundations, non-governmental and civil-society organizations, universities and the Church, among others, also provide assistance and information in this area.<sup>30</sup>

**Please provide more information on the mandate and function played by the Office for the Recruitment of Migrant Workers for Ecuadorian workers abroad.**

122. According to information provided by the Office of the Under-Secretary for Migration and Consular Affairs of the Ministry of Foreign Affairs, on 29 May 2001 Ecuador and Spain signed the Agreement on the Regulation and Management of Migratory Flows. Chapter II of the Agreement, entitled “Assessment of Professional Requirements, Travel and Reception of Migrant Workers”, establishes the following functions.

123. “Article 4. Assessment of professional requirements and the relocation of migrant workers shall take place in accordance with the following rules:

- “(i) The professional preselection of candidates shall be carried out by a Spanish-Ecuadorian selection commission in Ecuador. Professionally selected candidates shall undergo a medical examination and, if necessary, a preliminary period of training.

“The Selection Commission shall be composed of representatives of the administrations of the two Contracting Parties, in which the employer or his or her representatives may participate, and shall have as its objective the selection of the workers most suited for the jobs being offered, the organization of any preliminary training courses that may be necessary, as well as the provision of advice and assistance to workers regarding the entire procedure.

“Representatives of social agents, intergovernmental bodies and non-governmental organizations active in the field of migration and development cooperation and designated by the Contracting Parties may participate in the Selection Committee as advisers, as requested by the two Parties.

- “(ii) The selected workers shall sign a contract, as a general rule within a period not exceeding 30 days, and shall also receive travel documents upon request. A copy of the labour contract shall be provided to the Ecuadorian authorities. The labour contract may be replaced by a similar document depending on the nature of the sector of activity, as determined by the Joint Committee referred to in article 21 of this Agreement.

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<sup>30</sup> Information provided by the Under-Secretary for Migration and Consular Affairs in memorandum No. 302-2007 of 25 June 2007.

- “(iii) Under this Agreement, requests for residence visas shall be processed on an urgent basis by the competent Spanish consular office. The visa, which shall be stamped in the passport, shall indicate its type, purpose and the length of authorized stay in Spain. When the length of stay is six months or less, the visa shall serve to document this stay.”

124. “Article 5.

- “(i) The Ecuadorian authorities, together with the Spanish authorities, and within the scope of their competence, shall provide maximum facilities to enable the Selection Commission to carry out its work. They shall, to the extent possible, contribute to the training of the selected workers, where necessary, and their travel to Spain within fixed time limits. The cost of administrative formalities involved in travel from Ecuador to Spain shall be borne by the interested parties or, failing this, by the contracting enterprises.
- “(ii) Before undertaking travel, the workers shall receive the necessary information to enable them to arrive at their place of destination, and all information concerning their conditions of stay, work, accommodation and salary.
- “(iii) The competent Spanish authorities shall provide the immigrants with the relevant residence and work permits.”

125. This Agreement promotes the regular and planned migration of nationals of the two countries, recognizes the positive effects of migration on social and economic development and encourages cultural diversity and the transfer of technology. Its objectives are: to regulate migration flows between Ecuador and Spain in a planned and coordinated manner, ensure that Ecuadorian workers in Spain enjoy the same labour and social rights that are enjoyed by Spaniards, prevent clandestine migration and exploitation of the labour of foreigners in an irregular situation, and facilitate the voluntary return of migrants to their countries of origin.

126. With a view to implementing this instrument, Ecuador signed an agreement with IOM, which established the Office for the Recruitment of Migrant Workers, which has been operating within the Ministry of Foreign Affairs since March 2002. The Office receives offers of employment from Spanish enterprises transmitted to it by the Embassy of Spain, and proposes candidates for the positions for final selection and hiring by the Spanish enterprises.

127. The experience gained by the Office in the stages of recruitment, updating of its database, and preselection and selection of workers is a positive pilot experience which, in the framework of the Agreement concerning the Regulation of Migration Flows, has made it possible to send more than 4,000 Ecuadorians to fill jobs in Spain, under the same social, economic and employment conditions as are enjoyed by Spanish nationals.



128. Ecuadorians selected to work in Spain enjoy the same rights as Spanish citizens and therefore are fully entitled and free to participate in trade union organizations. Spain's Trade Union Institute for Development Cooperation (ISCOD) constantly and at every step in the recruitment procedure informs the selected workers of this entitlement.<sup>31</sup>

**Please specify how the right of each child of a migrant worker, including undocumented workers, to have a name, to be registered at birth and to have a nationality is effectively ensured in practice, also taking into account that, as stated in paragraph 281 of the State party's report, due to ignorance of the law and fear of being deported, irregular migrants often do not register their children. Furthermore, please provide more information on the measures taken to ensure the access to education of children of undocumented migrant workers.**

129. With regard to measures taken to ensure the right to be registered and to have a nationality, in addition to the provisions of the Constitution,<sup>32</sup> article 35 of the Children and Adolescents Code states: "Right to identification. - Boys and girls have the right to be registered immediately after birth, with the relevant paternal and maternal surnames ...".

130. In view of the fact that the study entitled "Situation of late registration in Ecuador", carried out by UNICEF through the Observatory for the Rights of Children and Adolescents, indicated that 600,000 girls, boys and adolescents living in Ecuador are not registered, the "Juntos por la Identidad" programme, financed by UNICEF, CONAMU, UNHCR, the Registry Office and CONAM, was launched in 2006. Under the programme some 135,000 persons were registered and issued with identity cards.

131. In addition, in 2007 the Office of the Vice-President of Ecuador has been promoting the National Registration and Identity Card Programme, entitled "¡Al Ecuador ponle tu nombre!" ("Identify yourself with Ecuador!"). Teams have been set up and are registering people free of charge in a straightforward manner.

132. This programme will make it possible for children born in Ecuador to foreign parents to exercise the right to have a nationality.

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<sup>31</sup> Information provided by the Under-Secretary for Migration and Consular Relations in memorandum No. 302-2007 of 25 June 2007.

<sup>32</sup> "Article 7. The following are Ecuadorians by birth: persons born in Ecuador, persons born abroad whose father or mother is Ecuadorian by birth, who are employed in the service of Ecuador or of an international organization, or are temporarily absent from the country for any reason, unless they express their will to the contrary; persons whose father or mother is Ecuadorian by birth, who reside in Ecuador and express their will to be Ecuadorians; persons whose father or mother is Ecuadorian by birth and, subject to the law, express their will to be Ecuadorians, between the ages of 18 and 21, even though they reside abroad.

133. The programme began in May 2007 in Morona Santiago and Pastaza and, in the first stage, intends to register and provide identity documents to approximately 10,000 persons and provide other services to another additional 14,000 persons.

134. The Registry Office's lack of funds is a major handicap, and for this reason agreements have been signed with municipalities, parish councils and various institutions for access to remote areas.

135. In the medium term, there are plans to register boys and girls in all maternity homes and hospitals nationwide, in cooperation with the Ministry of Health.<sup>33</sup>

136. With regard to education, as was indicated in the official report, in accordance with article 66 of the Constitution, the State guarantees education for any person - whether Ecuadorian or foreign - residing in the country. The article states: "Education is a right that cannot be waived, the necessary duty of the State, society and the family; a priority area of public investment, a requirement for national development and a guarantee of social equity. The State is responsible for formulating and carrying out policies that make it possible to attain these objectives."

**Please update the Committee on the steps taken to ensure an effective system of public defence for migrant workers and members of their families, including information on human and financial resources available in this respect. Please also inform the Committee on measures taken to ensure an effective implementation of the existing legislation establishing the rules of due process.**

137. Ecuadorian legislation provides that, when one of the parties does not have a defence counsel, the competent authority shall automatically request the participation of a public defender to provide his or her services in order to guarantee equality of arms.

138. The participation of public defenders is established in article 24, paragraph 10, of the Constitution; the State is responsible for appointing public defenders to assist any person with meagre economic resources in civil, criminal, labour, trade, traffic or tenancy matters, litigation of any kind or involving the police, contracts, transactions, documents and administrative actions. Public defenders work on an obligatory basis, their services are free of charge, and they are available for nationals and foreigners.

139. The Supreme Court is responsible for determining the manner in which public defenders comply with their duties in order to achieve effectiveness in the provision of this public service.

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<sup>33</sup> Press article entitled "Millón y medio de indocumentados" ("A million and a half people without papers"), published in *Hoy online* on Friday, 29 June 2007.

140. Public defenders are appointed by judges of the higher courts. The higher court of each province determines the number of public defenders, which is subject to approval by the Supreme Court. There are a total of 27 public defenders throughout the provinces.

141. Resources for the legal aid office are allocated from the budget of the judicial system.<sup>34</sup>

142. The rules of due process are set out in articles 23 and 24 of the Constitution, and basically consist in the principle of *nulla poena sine lege*; the presumption of innocence; the right to a defence; the right to be tried by the judge alone; and the need for the public authorities to provide reasons for their acts and decisions. The Constitution also provides that anyone who is arrested has the right to be fully informed of the reasons for the arrest, the identity of the authority ordering the arrest, the identity of the officers making the arrest and the identity of those conducting questioning.

143. Arrested persons must also be informed of their right to remain silent, to request the presence of a lawyer, or of the consular authority of their country of origin, in the case of migrant workers and their families. Such persons also have the right to communicate with a family member or any other person that they designate. The Constitution states: "... Anyone who detains, a person, with or without a written order from a judge, and does not immediately hand such person over to the competent authority, shall be punished".

144. In Ecuador, no one may be deprived of liberty, except pursuant to a written order by a competent judge, in the circumstances, for the period and in accordance with the formalities prescribed by law, except in the case of flagrante delicto, in which case no one may be held without a court order for more than 24 hours. No one may be held incommunicado.

145. Everyone has the right to be informed in a timely and proper manner, in his or her mother tongue, of the actions taken against him or her.<sup>35</sup>

146. Pursuant to article 18 of the Ombudsman Act, the Ombudsman has the task of appearing before the administrative and judicial authorities to monitor due process. Through this appearance, he or she ensures that the authorities responsible for the cases in question inform the Ombudsman's Office of the handling of the cases with a view to avoiding delays or actions that are not related to the legal proceedings. In most cases, the mere appearance of the Ombudsman constitutes a guarantee for the parties.<sup>36</sup>

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<sup>34</sup> Information provided by Dr. Gustavo Donoso Mena, Executive Director of the National Council of the Judiciary in letter No. 821-DE-CNJ-07 of 4 July 2007.

<sup>35</sup> Information provided by Dr. Gustavo Donoso Mena, Executive Director of the National Council of the Judiciary in letter No. 821-DE-CNJ-07 of 4 July 2007.

<sup>36</sup> Information provided by Dr. Francisco Bonilla of the Office of the Ombudsman by electronic mail on 27 July 2007.

### **C. Part IV of the Convention**

**Please provide information on steps already taken by the State party to facilitate the exercise by Ecuadorian migrant workers living abroad of the right to vote and be elected in elections held in the country. In this respect, please also inform the Committee on the level of participation of the Ecuadorians abroad in the last elections held in the year 2006.**

#### **Legal basis**

147. Article 27 of Ecuador's Constitution recognizes the right of Ecuadorians living abroad to vote in presidential and vice-presidential elections, and therefore Ecuadorian emigrants can participate in the democratic life of their home country. This provision is consistent with the stipulations of the Elections Act and the Regulations pursuant to the Act on the Exercise of the Right of Ecuadorians Living Abroad to Elect the President and Vice-President. Official Gazette No. 672 of 27 September 2002. Resolution of the Supreme Electoral Tribunal PLE-TSE-2-20-7-2006.

148. On this legal basis, an inter-institutional cooperation agreement was signed between the Ministry of Foreign Affairs and the Supreme Electoral Tribunal on 10 August 2005, with a view to providing voting facilities for the presidential elections on 15 October and 26 November 2006 in all the consular offices abroad.

#### **149. Action undertaken**

- In September 2006, the Department for the Electoral Process Abroad was established under the Office of the Under-Secretary for Migration and Consular Relations;
- The Supreme Electoral Tribunal drafted and adopted a directive on the transfer and use of specific resources to allow Ecuadorians living abroad to vote;
- The consular offices began an awareness-raising campaign, by distributing publicity material and giving interviews on the most popular radio and television stations in the areas they covered;
- Weekly, fortnightly and monthly press bulletins were prepared and distributed among all Ecuadorians abroad. In addition, the websites of the Ministry of Foreign Affairs, the consulates and the Supreme Electoral Tribunal were updated;
- A mobile consulate system was adopted to reach groups of expatriates living far from the consulate offices. Work was carried out at the weekends to update the electoral register, which resulted in a large number of citizens being included in the system, and thus the level of voter registration was as successful as expected;
- The consulates representing the most people were provided with computer equipment on the basis of the number of potential registered voters, in order to offer the appropriate facilities to fulfil the objective set for those offices;

- In addition, staff were engaged to work on the registration of citizens living abroad. The amount contributed by the Supreme Electoral Tribunal in that first phase amounted to US\$ 168,277.21;
- The final result exceeded expectations, with a total of 143,352 voters registered. Of those, 89,728 were registered in Spain;
- Once the registration process was completed, the Supreme Electoral Tribunal received the electoral registers from abroad; once the information was checked by the Tribunal, there was a final figure of 143,351 citizens registered and eligible to vote;
- The Supreme Electoral Council and the Ministry of Foreign Affairs ensured coordination in logistics, funding, training and human resources for both the first and second rounds of the elections;
- The consulates organized the search for suitable places to serve as polling stations, and coordinated and trained staff to man them;
- A total of 374 polling stations were open on election day (15 October 2006 and 26 November 2006). There was a voter turnout of 66.52 per cent, with 58.68 per cent valid votes, 0.84 per cent blank and 7 per cent spoilt;
- The level of participation could be considered high, in terms of both registration and voter turnout. Expatriates who, for the first time, had the opportunity to exercise their right to vote for the president and vice-president of Ecuador, displayed active commitment thus contributing to the country's democratic life;
- On 30 September 2007, elections will be held outside the country to enable Ecuadorian citizens living abroad to elect representatives in the National Constituent Assembly;
- The signature of the cooperation agreement on 7 May 2007 between the Ministry of Foreign Affairs and the Supreme Electoral Tribunal made it possible, inter alia, to include aspects of interest to migrants in the regulations pursuant to the Election Statute, and to update the electoral register abroad (which included the adoption of a new register with more personal details on the voters);
- The Supreme Electoral Tribunal passed a resolution through which it adopted a regulation on the reopening of the electoral register abroad between 3 May and 3 June 2007 and a decision that the voter registration form, the voter registration certificate and the forms for the collection of signatures in support of foreign candidatures would be posted on the Tribunal's website for the consulates to download them, thus expediting the process.<sup>37</sup>

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<sup>37</sup> Information sent by the Office of the Under-Secretary for Migration and Consular Relations in memorandum No. 302-2007 of 25 June 2007.

**Please inform the Committee on the legislation and practice regarding family reunification of migrant workers in accordance with article 44 of the Convention as well as on measures taken, if any, to facilitate it.**

150. Ecuadorian legislation considers the family to be the nucleus of society, and therefore family reunification is a priority for the Government and a goal towards which it directs its actions.

151. The Aliens and Migration Acts establish provisions relating to the facilities to be provided to applicants' family members, spouse or dependants.

152. Article 9, paragraphs 6 and 12, of the regulations pursuant to the Aliens Act relates to the protection visas issued for dependent family members and the requirements that must be met to receive such protection.

153. In addition, Ecuadorian legislation recognizes common-law unions as an institution which is similar to marriage and therefore entails the same rights for legal purposes. The only requirement set out in the law is that the couple must have lived together for at least two years.

154. A practical example of the implementation of the policy of reunification of migrant workers was the "Agreement to regularize the employment and migration situation of nationals of Ecuador and Peru in the extended border integration zone", signed with Peru on 26 December 2006, article 3, paragraph (e), of which stipulates: "To include the spouse, for the purposes of regularization, the applicant must present the marriage certificate; for children under the age of 18, the birth certificate for each child must be presented. For cohabiting partners, in the case of Ecuador, the relevant court decision legalizing the common-law union must be produced, and for Peru, documentary proof that the couple has been together for two years, issued by a competent authority, and a civil status certificate must be produced."

**Please clarify whether migrant workers have the right to form associations and trade unions and be part of their executive bodies. Please also indicate whether there is a system of registration in place for migrant workers' associations and/or migrant workers' trade unions existing in the State party's territory.**

155. According to information provided by the Ministry of Labour, foreigners have the same rights as Ecuadorians and, since the Labour Code does not stipulate any restrictions, there are no impediments to prevent migrant workers from forming associations and trade unions and being members of their executive bodies. However, according to information provided by the President of the Ecuadorian Confederation of Free Union Organizations (CEOSL), the majority of trade union statutes restrict access of migrant workers to their executive bodies, since one of the requirements stipulates that executives must be Ecuadorian by birth.<sup>38</sup>

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<sup>38</sup> Information provided by Dr. Jaime Arciniegas, president of CEOSL, personal interview on 17 July 2007.

156. According to information provided by the Ministry of Social Welfare, migrant workers do have the right to form associations in Ecuador and be part of their executive bodies, but the Ministry, which is the competent body in this area, does not have a special system to register those associations.<sup>39</sup> Various immigrant organizations have been established in Ecuador.

#### **D. Part V of the Convention**

**Please inform the Committee about the legislative framework and practical measures taken to ensure that seasonal and frontier workers throughout the country are not discriminated against and can fully enjoy the right to the same treatment as nationals in respect of health, education, fair pay, conditions of work and social security benefits.**

157. The Ministry of Labour reports that seasonal farm workers and frontier workers are protected by Andean Community decision 545, whose regulations are in the process of being drawn up. In addition, decision 583 on social security and decision 584 and its regulations on health and safety at work also apply.

158. In the health field, as indicated in the official report, medical care is provided to all on request, regardless of their migration status.

159. In addition, under the most recent reform of the Free Maternity and Childcare Act, the right to free maternity care for mothers and newborns applies to all foreign women, regardless of their migration status, and their children.

160. The central objective of the Free Maternity Act is to eliminate the economic barrier to accessing health care. It therefore finances the cost of such services as antenatal check-ups, labour, postpartum care, obstetric emergencies, family planning, domestic violence, early detection of cancer, HIV tests, sexually transmitted diseases, newborn care, preventive care, common childhood illnesses, dental care, breast-milk substitutes, blood components and whole blood, in addition to medicines, inputs, micronutrients, blood, blood derivatives and reagents for laboratory tests, which are all entirely free.

161. In this respect, the Free Maternity and Childcare Act has contributed significantly to the increase in institutional childbirth and the extension in coverage of antenatal check-ups and children's health checks. In 2005, 1,294,002 women and 1,557,232 children under the age of 5 received health care.

162. The implementation of the Free Maternity and Childcare Act is a work in progress, and depends on the participation of all actors in the central Government and the Ministry of Health, local government and the provincial health boards and civil society through users' committees.<sup>40</sup>

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<sup>39</sup> Information submitted by Giovanni López Endara, Legal department of the Ministry of Social Welfare, by electronic mail on 4 July 2007.

<sup>40</sup> Information provided by Fabiola Estrella, International Cooperation Coordinator in the Ministry of Health, through communication Sac-13-07/441-LR of 6 June 2007.

### **E. Part VI of the Convention**

**Please provide further information on the implementation of multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of smuggling and trafficking of migrants. Please also provide the Committee with information - including data on prosecutions, convictions and sanctions imposed for the years 2003-2006 - on:**

**The extent of the phenomenon of trafficking in persons in, through and from the State party's territory and on the measures taken to combat it.**

163. Ecuador is a party to the United Nations Convention against Transnational Organized Crime and the protocols that supplement it: the Protocol against the Smuggling of Migrants by Land, Air and Sea and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

164. Nonetheless, given the nature of this phenomenon and since the national plan to combat trafficking in persons has been operational for only eight months, there is insufficient information on the scope of the problem. The Office of the Attorney-General has stated that, to date, it has processed 152 cases of trafficking in persons, of which 4 have resulted in convictions.

165. With regard to the measures adopted to combat this phenomenon, the technical secretariat of the national plan to combat trafficking in persons has contacted the Inter-American Development Bank in Quito to establish the terms of a cooperation project to provide support to all the activities provided for in the plan for 2007. The terms of reference have already been adopted and agreed with the members of the secretariat, and the process of appointing an executive coordinator and an accountant is currently under way. The programme has three components:

- (i) Inclusion of the issue of trafficking in the country's strategy;
- (ii) Training of trainers in government institutions involved in the issue;
- (iii) Communication and dissemination of information in high-risk areas.

166. It was agreed that the implementing agency would be the National Council for Children and Adolescents, and that the convention would be signed in the coming days.

167. Currently, in relation to the protection of victims, the Public Prosecutor's Office, through the Victim and Witness Protection Programme and in collaboration with other government agencies and NGOs, is offering assistance to victims in such areas as the provision of shelter, police protection and medical and psychological care. However, experience has shown that dealing with trafficking cases requires specialist, sensitive and highly trained personnel.



168. For this reason, within its strategic international alliances, the Ecuadorian Government, through the technical secretariat, has developed links with international bodies that have expressed an interest in supporting its initiative. In this respect, the technical secretariat, in cooperation with DINAPEN, has formulated a proposal for the strengthening and implementation of the anti-trafficking units by district, which is to be implemented on a pilot basis in Quito.

169. The general objective is to strengthen the judicial system, the Public Prosecutor's Office and the specialized units of the national police by providing judicial personnel and teams specialized in the issues covered by the national plan and facilitate coordination between institutions.

**The measures taken to combat criminal networks operating from the State party's territory which smuggle migrants outside the country. In this respect, and with reference to paragraph 433 of the State party's report, please inform the Committee in particular on the measures taken to address the exploitation and smuggling of migrants at the Northern border by the so-called *cuadrilleros*.**

170. Cases of trafficking in migrants and other persons fall under article 440 of the Criminal Code, which contains the following provisions.

171. Any person who illegally facilitates ... the migration of nationals or foreigners from Ecuador to other countries, without prejudice to any penalty imposed for a more serious offence, shall be liable to long-term imprisonment for between four and eight years and a fine of between 20 and 40 basic unified wage units.

172. Also liable to this penalty shall be persons responsible for the protection and care of children or adolescents, whether they are fathers, mothers, grandparents, uncles, aunts, brothers, sisters or guardians or any other persons who in any manner facilitate the commission of this offence.

173. The competent court shall order the seizure and immediate confiscation of the vehicle used for unlawful purposes, when it is involved in an accident causing death or injury, and the proceeds of the resale of the vehicle shall be used in the manner laid down in article 186 of the Code of Criminal Procedure.

174. For offences related to that of smuggling of emigrants, an accumulation of penalties shall be imposed up to a maximum of 25 years' special long-term imprisonment.

175. When the actions involved in the offence of smuggling of emigrants cause the death of an emigrant, those responsible shall be liable to extraordinary long-term imprisonment for between 12 and 16 years. If the injuries referred to in articles 465, 466 and 467 of this Code are caused, those responsible shall be liable to ordinary long-term imprisonment for between 8 and 12 years.

176. If the perpetrator knew, or if it was obvious, that the means of transport used to carry the emigrants was in poor condition or had insufficient capacity for the number of persons it was carrying, that fact shall be considered to be an aggravating circumstance.

177. Also liable to this penalty shall be the owners of the means of air, sea or land transport and any persons who form part of the crew or are entrusted with the operation of those means of transport, if they are found to have known of the offence and to have participated in it.

178. Victims who reveal the identity of those involved in the commission of this offence shall be protected by the appropriate authority.

179. The Committee is informed that the steps taken to combat criminal networks which are engaged in smuggling migrants are listed in the official State report. These steps are general in nature and not directed at specific groups such as the *cuadrilleros*. Briefly described, these steps are as follows:

(a) By Executive Decree No. 1981 of 31 August 2004, the Government declared that efforts to prevent kidnapping, smuggling of migrants and related crimes were a priority State policy;

(b) In 2006, following two years' work by various agencies, during which the National Plan to combat the above-mentioned phenomena was drawn up, agreed and publicized, the National Plan to Combat Trafficking in Persons, Smuggling of Migrants, Sexual Exploitation and Other Forms of Exploitation, and Prostitution of Women, Children and Adolescents, Child Pornography and Corruption of Minors was adopted;

(c) The Department of Migration has stepped up checks on migration and, together with the national police, carried out intelligence operations which enabled perpetrators of this offence to be identified and arrested. The Department of Migration and Aliens reports that 556 persons were arrested for alleged smuggling of migrants in 2006 alone;

(d) The exercises and operations that are conducted by all border police units have helped to increase awareness of the modus operandi of the gangs of traffickers. As a result, classified advertisements in the most widely circulated provincial newspapers have been constantly monitored for offers of employment contracts abroad in nightclubs, education centres, casinos or marriage agencies, since these places often provide a backdrop for activities linked to illegal migration;

(e) In the national police there is a specialist unit to combat trafficking in migrants. If minors are involved in the commission of such an offence, the national police work together with the National Police Department for Children and Adolescents (DINAPEN). DINAPEN staff conduct operations to prevent trafficking in persons in high-risk areas;

(f) The Department of the Merchant Marine and Coastal Affairs has also conducted a number of operations and inspections. Between 2002 and 2006, 54 vessels were apprehended for smuggling of migrants;

(g) By Ministerial Agreement No. 027-MFG-2004 of 2 June 2004, the Office of the Public Prosecutor created task forces on tourism, migration and trafficking in persons. These units were originally set up in the district prosecutor's offices in Pichincha, Guayas and Galápagos, but given the scale of the problem, further units have been established in Azuay, Cañar and Manabí, and in other regions experiencing high levels of migration. The Public Prosecutor's Office has indicated that between January 2001 and December 2006, 2,795 cases of smuggling of migrants were initiated.

180. Lastly, we wish to provide the Committee with an explanation concerning the *cuadrilleros*. According to information supplied by the district prosecutor's office in Carchi, a substantial proportion of the farmland in Carchi province, especially on higher ground, is used for potato cultivation, requiring a large number of workers beyond the resources of the farms and estates, so that they recruit teams (*cuadrillas*) of Colombian workers who have been living in Nariño department in Colombia for many years. Each team has its own leader.

181. The farm workers carry out sowing, hoeing, weeding, spraying and harvesting and then return to their homes in Nariño, Colombia, or remain in the border area.<sup>41</sup> The team leaders, sometimes known as *cuadrilleros*, are Colombian farm workers most of whom are Colombian nationals, who contact the other workers in the team. In some cases this can result in exploitation by the leaders.

182. According to information supplied by Professor Isabel Ramos of the Universidad Andina Simón Bolívar, who is a member of the research panel for the study on the impact of the Colombian conflict in Ecuador, the person standing above the *cuadrilleros* is generally a former worker in the area who has established social networks and acquired extensive logistical knowledge of the area (the parish of Julio Andrade), enabling him to become a sort of "labour wholesaler", i.e. a recruitment agent who brings Colombian workers to Ecuador. In the professor's view, this situation involving unregistered labour has led to the casualization of labour in this area, and it is not possible to report on any specific step taken to address this situation, since it is only recently that it has become known and steps have been taken to study it.<sup>42</sup>

183. The information provided by the Attorney-General was used to prepare the following table on proceedings relating to smuggling instituted between January 2001 and December 2006.

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<sup>41</sup> Information provided in letter No. 4207 MFG/UAI of 16 July 2007, signed by Attorney-General Jorge German.

<sup>42</sup> Information supplied by telephone by Professor Isabel Ramos of the Universidad Simón Bolívar.

**Proceedings instituted in relation to smuggling of migrants  
between January 2001 and December 2006**

| Province         | Cases instituted |
|------------------|------------------|
| Azuay            | 1 939            |
| Carchi           | 1                |
| Cañar            | 102              |
| Chimborazo       | 44               |
| El Oro           | 8                |
| Esmeraldas       | 6                |
| Guayas/Galapagos | 552              |
| Imbabura         | 4                |
| Loja             | 10               |
| Manabi           | 22               |
| Los Rios         | 0                |
| Pastaza          | 10               |
| Pichincha        | 70               |
| Sucumbios        | 0                |
| Tungurahua       | 17               |
| Zamora Chinchipe | 10               |
| Napo/Orellana    | 0                |
| <b>Total</b>     | <b>2 795</b>     |

*Source:* International Affairs Unit, Office of the Attorney-General.

**Please indicate the position and action taken by the State party when boats carrying Ecuadorian migrants are intercepted at sea by a third party.**

184. According to information provided by the Ministry of Defence, when a United States unit makes a request to inspect and board an Ecuadorian vessel which is outside our territorial waters, on suspicion of smuggling of drugs or on suspicion of smuggling of migrants, operational procedures agreed by the maritime authorities of Ecuador and the United States in August 2006 are applied between the two countries.

185. Both Ecuador and the United States are parties to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the Protocol against the Smuggling of Migrants by Land, Air and Sea supplementing the United Nations Convention against Transnational Organized Crime, which was adopted in 2000, so that such procedures are based on mutual cooperation.

186. Under the Memorandum of Understanding governing cooperation in relation to search and rescue between the Department of the Merchant Marine and Coastal Affairs in Ecuador and the United States Coast Guard, in cases where it has not been possible to check information on the vessel to be inspected or to confirm its nationality, the Ecuadorian maritime authority authorizes the boarding and inspection of the vessel with an additional special instruction stipulating that “in the event that no evidence is found [of illegal drugs which prompted] the inspection, the Government of the United States shall be answerable for any claim for damages on the part of the shipowner”.

187. Concerning vessels carrying migrants which are inspected by United States naval units, the Ecuadorian maritime authority has never authorized the sinking of any vessel for any reason. According to statistics supplied by the Ecuadorian maritime authority, 12 vessels sank in 2004, none in 2005 and 1 in 2006. These sinkings, according to information provided by the Ministry of Defence, are often due to the fact that fishing vessels carrying migrants are scuttled by the crews themselves, or else the sinkings are caused by the poor condition of the vessels.<sup>43</sup>

**Please update and further describe the measures taken by the State party to provide support and facilities for its returning migrant workers, as well as for the implementation of bilateral or regional agreements on the return of migrant workers. In this respect, please update the Committee on the implementation of regional instruments in the field of migration, such as the Andean Labour Migration Instrument and the May 2006 Lima Declaration.**

188. Ecuador has had a number of positive experiences of cooperation for the reintegration of migrants, as in the case of a joint project between agencies in the canton of Ticino in Switzerland and the canton of Cotacachi in Ecuador. This project is aimed at securing the reintegration of 90 indigenous Otavalo families in work, who prepare for their return through training in farm work. The project also provides for the settlement of the workers in the municipality of Imbabura.

189. Another example worthy of mention is the project being carried out by Ecuador with cooperation from the International Organization for Migration, the Home Office in the United Kingdom and the Government of Spain. It is similar to the above-mentioned project with Switzerland, in that it is aimed at the reintegration of irregular Ecuadorian migrants into the workforce through vocational training. Direct assistance has also been received from IOM for development programmes along the northern border and refugee resettlement programmes.

190. On 8 November 2006, the Cañar-Murcia Co-development Project was signed, and the first phase began in March 2007. The purpose of this project, a pilot experiment put forward from the Spanish Agency for International Cooperation and the Autonomous Community of the region of Murcia, is to contribute to the development of the villages in which the migrations begin and end. It involves various activities implemented between the social and institutional context where the emigration begins and the social and institutional context where it ends - the place where the migrants are currently living, working and being trained. The project is based on a concept of co-development which includes the socio-economic integration of the immigrants at their place of destination and results in development in the place of origin. It is claimed that the project can be replicated in other regions and countries.

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<sup>43</sup> Information supplied by Minister of Defence Lorena Escudero in letter MJ-3-2007-864 of 21 June 2007.

191. In addition, there are other programmes of voluntary return, such as:

VARRP (Voluntary Assisted Return and Reintegration Programme) - United Kingdom

PREVIE (Voluntary return of immigrants from Spain)

Programme of assisted voluntary returns from Mexico

192. The purpose of these projects is to permit the sustainability of voluntary return from Spain to the country of origin, by means of a fund which enables them to reintegrate by setting up microenterprises and taking up private medical insurance. Since 2003, 354 Ecuadorians have benefited from the PREVIE programme, while since 2005, 914 Ecuadorians, including minors, have benefited from the programme of return from Mexico.<sup>44</sup>

193. The Andean countries have not yet agreed on regulations for the full implementation of decision 545, relating to the Andean Labour Migration Instrument.

**Please update the Committee on initiatives to regularize the situation of irregular migrant workers in Ecuador. In this respect, please inform the Committee on the impact and the implementation of the Agreement signed in December 2006 between the State party and the Government of Peru to regularize the situation of their nationals working in the border region between the two countries.**

194. According to information provided by the Office of the Under-Secretary for Migration and Consular Relations in the Ministry of Foreign Affairs, following the work of the round table on labour migration and consultations with civil society in the towns of Cuenca, Loja, Machala and Pasaje, involving the participation of business people in the farming and construction sectors, among others, agreement was reached to outline strategies to be applied during the regularization of foreigners in Ecuador, especially with Peru and Colombia.

195. In this way, at the bilateral level, the Foreign Ministers of Ecuador and Peru signed the "Agreement to regularize the employment and migration situation of nationals of Ecuador and Peru in the extended border integration zone", which entered into force on 21 February 2007.

196. The purpose of migratory regularization is to establish a special migration regime to regularize residence by farm and construction workers and domestic employees in the border integration region, which, for these migration-related purposes, is being extended in Peru to the departments of Lambayaque, Amazonas and Loreto, and in Ecuador to the provinces of Azuay and Cañar.

197. By an exchange of notes, the Foreign Ministers of Ecuador and Peru agreed on the extension of the "Agreement to regularize the employment and migration situation of nationals of Ecuador and Peru in the extended border integration zone" as follows:

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<sup>44</sup> Information supplied by Alejandro Guidi, IOM, by electronic mail, on 27 July 2007.

(a) The deadline laid down in article 3 of the Agreement was extended, to allow documents to be submitted up to 26 October 2007, instead of 10 May 2007;

(b) The deadline laid down in article 4 of the Agreement was extended, so that the visa granted to beneficiaries will be valid up to 31 December 2008, instead of 31 December 2007;

(c) The provision contained in article 7 of the Agreement was endorsed, so that as long as it is in force, i.e. up to 31 December 2008, mandatory departure, deportation or expulsion for breaches of migration rules is suspended;

(d) In the context of a process whereby normal rules governing migration are waived, and under the principle that migrants are not to be treated as criminals subscribed to by the two Governments, no penalty will be applied for unlawful stay;

(e) The first meeting to review the Agreement will be held in one of the towns in the extended border integration zone in the third week of September 2007;

(f) It was noted that this humanitarian process, which is unprecedented in bilateral relations, constitutes a landmark in building new relations in pursuance of the Peace Agreements signed in 1998.

198. The purpose of the above-mentioned Agreement is to ensure that the Peruvian workforce enjoys the same social benefits and labour rights as Ecuadorians, and that the following are guaranteed:

- Equal treatment.
- The right to fair and adequate remuneration which ensures the human development of the worker and his or her family.
- The right to health.
- Health and safety at work.
- Social security.
- Vocational training.
- And other rights as in the case of a national of the host country.

199. The following activities have been organized in order to disseminate and apply this Agreement:

- Training seminars held in the towns of Cuenca, Loja and Machala for officials involved in the regularization process.
- Fostering the process: posters, leaflets, interviews in the local media.

- Request to the Ministry of Economy and Finance for the waiver of the \$60 fee for employment cards, to minimize the cost of the process, on a basis of reciprocity and in accordance with the Agreement signed with Peru (the response from the Ministry of Economy and Finance to the exemption application is awaited).
- The acquisition of a machine to produce the employment cards is under way.
- Between 1 and 4 July a study was carried out in the towns of Cañar, Paute, Loja and Machala concerning the social and employment situation of illegal Peruvian migrants, in the framework of the ongoing process of regularization in the fields of work and migration. This study, carried out using the “focus group” approach, made it possible to identify obstacles and difficulties which Peruvian citizens are encountering in this process. The findings of this study will be publicized by MTML in the coming days, in advance of a campaign to promote awareness of the rights of migrant workers and their families on the southern border.
- At a meeting on 21 February 2007, the Consultative Council on Migration Policy adopted a resolution under which Peruvian citizens who wish to receive the benefits laid down in the Agreement to regularize the employment and migration situation of nationals of Ecuador and Peru in the extended border integration zone and who were penalized for migration offences before the Treaty entered into force will be able to enjoy this special migration treatment, subject to compliance with the requirements set out in the above-mentioned Agreement. This measure will be applied subject to reciprocity for Ecuadorians in Peru who benefit from the above-mentioned bilateral instrument.
- This information is of the dominion of the provincial governments in the extended integration zone, as well as the labour, migration and police authorities.
- It is planned to send mobile teams to the areas containing the greatest numbers of Peruvian migratory workers for the purpose of granting visas, subject to compliance with the relevant requirements.

200. Concerning the other processes for regularization of Ecuadorians and foreigners, the following actions are planned:

- (a) Preparation of material which will make it possible to initiate a process of legalization of Colombians in Ecuador;
- (b) Follow-up of regularization initiatives in Holland, Germany and Switzerland.<sup>45</sup>

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<sup>45</sup> Information supplied by the Under-Secretary for Migratory and Consular Relations in memorandum No. 302-2007 of 25 June 2007.



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