



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

Distr.: General
20 November 2009
English
Original: French

**Committee on the Protection of the Rights of All
Migrant Workers and Members of Their Families**
Tenth session

Summary record of the 101st meeting

Held at the Palais Wilson, Geneva, on Tuesday, 21 April 2009, at 3 p.m.

Chairperson: Mr. El Jamri

Contents

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

Initial report of Colombia

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Editing Unit, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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

Consideration of reports submitted by States parties under article 73 of the Convention (agenda item 3) (continued)

Initial report of Colombia (CMW/C/COL/1); list of issues (CMW/C/COL/1/Q/1); written replies by the State party (CMW/C/COL/Q/1/Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Colombia took places at the Committee table.*
2. **Ms. Vargas** (Colombia) said it was a cause of concern in Colombia that only 40 States were parties to the Convention and that few developing countries, which were after all the main receiving countries for migrant workers, had ratified it. Colombia was working to promote, respect and defend the human rights of all those in its territory and to comply with the commitments it had undertaken by ratifying international human rights instruments. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families served as a frame of reference for the formulation and implementation of the State's migration policies.
3. Article 100 of the Constitution said that aliens enjoyed the same civil rights and guarantees as Colombians; nevertheless, the law might impose special conditions on or nullify the exercise of specific civil rights by aliens. For example, under Act No. 1070 of 2006, aliens resident in Colombia were entitled to vote only in municipal or district elections from the last place where they had established their domicile. In 2004, in Decree No. 4000, Colombia had adopted its migration regulations, governing the entry and stay of foreign nationals in Colombia. In 2008, as part of the integrated migration policy, the State had decided to amend article 43 of the migration regulations, concerning the issuance of visas, so as to update the list of countries whose nationals required a visa to enter Colombia as tourists or temporary visitors. The number of countries whose nationals had to have prior authorization to obtain a visa had been reduced from 124 to 25. In order to streamline the migration process, Colombian consulates abroad had been given greater autonomy to issue visas. In article 30, the migration regulations authorized the issuance of a temporary work visa to all those entering the country in the context of temporary labour.
4. In 2001, Colombia had adopted Decree No. 2107, which had given all foreign citizens in an irregular situation the opportunity to regularize their situation in Colombia. Of the 2,014 applications for regularization received, 1,673 had been approved and 341 rejected. In 2008, the Government had adopted another decree introducing a new regularization process for aliens in Colombia. Aliens wishing to take advantage of it had had to submit a request in writing to the Administrative Department of Security (DAS), the competent authority in migration matters, in their place of residence, within 180 days of the publication of the decree. The measure was addressed to all aliens who had entered the country prior to 1 April 2008. The regularization process was scheduled to be completed in May 2009. By the end of March 2009, requests for regularization had been submitted by 1,309 aliens, 47 per cent of them Chinese, 23 per cent Ecuadorians, 12 per cent Peruvians and 18 per cent Cubans, Argentines, Venezuelans, Brazilians, Spanish, etc.
5. The international human rights conventions and treaties ratified by Colombia had precedence over domestic legislation. All the fundamental rights and guarantees set out in the Convention were recognized in the Constitution and in the legislation. Article 25 of the Constitution enshrined the right to work, which must be exercised under decent and equitable conditions. The Labour Code proclaimed that all workers were equal before the law, prohibited any distinctions in the treatment of workers and recognized the right freely to choose one's profession. Migrant workers and members of their families enjoyed the same guarantees in respect of economic, social and cultural rights as did Colombian

nationals. Under article 13 of the Constitution, the State must create the necessary conditions for real equality among citizens and, to that end, it must adopt measures to benefit disadvantaged or marginalized population groups. The same article authorized the State to provide special protection to the most vulnerable individuals and to sanction any infringement of their rights. In order to guarantee the effective exercise of fundamental rights, article 86 of the Constitution established constitutional protection proceedings, meaning that anyone could institute court proceedings to request the immediate protection of his or her fundamental rights if he or she feared they might be violated by the action or omission of any public authority.

6. The National Intersectoral Migration Committee had been established in 2003 with a view to overseeing the implementation of Colombia's migration policy. Its responsibilities included monitoring the implementation of the international agreements, treaties and other commitments undertaken by Colombia in respect of migration. It was authorized to formulate recommendations on the application of domestic legislation concerning migration; however, it had no authority to consider individual cases. Recognizing the need for better coordination of the Government's efforts to protect and defend Colombians abroad, the Ministry of Foreign Affairs had decided to include in its foreign policy for 2010 an integrated migration policy aimed at strengthening and better protecting individual freedoms. It was to be implemented in four stages: drawing up the policy's broad outlines (May 2008); informing Colombians abroad and the competent bodies about the general outlines of the policy (July to October 2008); drafting and adopting a final document with a view to the policy's implementation (April 2009); and publicizing the document and following up the commitments it entailed (May 2009 to December 2012).

7. Colombia's development was affected in various ways by the growing numbers of its nationals abroad. On the one hand, increased remittances from Colombian workers residing abroad, the temporary migration of workers and the subsequent return to the country of educated labour were favourable phenomena. On the other hand, since migrants were particularly vulnerable and needed the State's protection, Colombia had a great deal of coordination to do so as to provide the best possible services to Colombians abroad. To that end, as part of the National Development Plan 2006–2010, Colombia had elaborated an integrated, coherent and concerted migration policy designed to meet the needs and expectations of Colombians abroad. In general, migration policy aimed to defend, protect and guarantee the rights of all persons involved in migratory flows and to enable prospective emigrants to take informed decisions and plan their future while still under the State's protection. The chief objectives of the plan of action accompanying the policy were to defend, protect and guarantee the rights of Colombians abroad and of foreigners in Colombia; to facilitate the return to the country of highly-qualified Colombians; to improve the skills and enhance the training opportunities of Colombians abroad and of foreigners in Colombia; to offer effective public services to Colombians abroad and to foreigners in Colombia; and to ensure that migratory flows were regular and in conformity with international standards. A number of bodies working in the fields of education, culture, social welfare, economics, security and foreign relations were involved in implementing the plan of action and the integrated migration policy.

8. In 1996, the Colombian Government had established the Inter-Institutional Committee to Combat Trafficking in Women and Children, made up of various ministries and bodies responsible for prosecuting traffickers and assisting their victims. In 2005, the State had adopted Act No. 985, whose goals included measures for prevention, protection and assistance with a view to ensuring respect for the fundamental rights of trafficking victims in Colombia and abroad and stronger action by the State in that area. Article 3 imposed a penalty on traffickers of 13 to 23 years' imprisonment and a fine of 800 to 1,500 times the legal minimum wage in force. Article 12 conferred on the Inter-Institutional Committee the functions of government consultant and coordinator of the State's activities.

Made up of 14 bodies, including the Ministry of the Interior and Justice, the Committee had such jobs as providing advisory and coordination services and developing and proposing policies, strategies, campaigns and surveys on the trafficking of persons. The Committee had worked out an integrated national strategy for combating human trafficking for 2007–2012 which was the main conduit for the State’s policy.

9. In conclusion, she said that Colombia was a party to the Forced or Compulsory Labour Convention, 1930 (No. 29) of the International Labour Organization, the Convention on the Elimination of All Forms of Discrimination against Women, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the United Nations Convention against Transnational Organized Crime and the Protocol thereto and the Rome Statute of the International Criminal Court.

10. **The Chairperson** thanked the representative of Colombia for her statement, which had provided new elements and additional information. Speaking as a member of the Committee, he said he wished to make two general remarks. Firstly, on the coordination of government policy in the field of migration, he wished to know how the competent bodies combined their activities at the national level and how the various programmes being implemented were administered. He also wished to know how Colombia coordinated its migration policy with neighbouring States in the region. His second remark concerned the Colombian report, the written replies to the list of issues and the statement just made. Some of the information provided seemed merely theoretical and failed to give a clear picture of what was actually being done. For example, more information on how the legal measures adopted were translated into practice would be useful.

11. **Ms. Cubias Medina** (Country Rapporteur) emphasized the efforts that Colombia had clearly made to develop an integrated migration policy, both domestically and abroad. She congratulated the State party on having established an inter-institutional committee to combat trafficking in persons and a related institution at the national level and on having raised the number of years traffickers could be imprisoned.

12. She would like clarification on the written replies by the Government of Colombia (CMW/C/COL/Q/1/Add.1) to the list of issues (CMW/C/COL/Q/1), particularly on the following points:

Paragraph 2 – What measures were being taken to disseminate the Convention to the relevant institutions?

Paragraph 4 – What data had the studies undertaken yielded? Were any studies going to be carried out at the national level to learn about the situation of children who remained in the country of origin after their parents migrated?

Paragraph 8 – Where were detained irregular migrants held, given that there was no centre for such purposes?

Paragraph 9 – What bodies were authorized to retain or confiscate migrants’ identity papers?

Paragraph 10 – Was Colombia planning to prohibit collective expulsion? What was the distinction in legal terms between “*deportación*” (deportation) and “*expulsión*” (expulsion)? What remedies were available in both of those cases?

Paragraph 11 – What restrictions were envisaged with regard to the right of Colombian nationals to leave the country?

Paragraph 12 – Could the delegation provide more information on the activities and workings of the National Intersectoral Commission on Migration?

Paragraph 14 – With reference to labour inspection at migrants’ workplaces, had evidence been found that the rights of any migrants had been violated?

Paragraph 16 – What activities did the Migrant Information and Support Centre (CIAMI) engage in?

Paragraph 17 – With reference to the children of migrant workers in an undocumented or irregular situation, were there any assurances that their mothers would register them? How was the right to health of undocumented adult migrants guaranteed?

Paragraph 19 – Did migrant workers have the right to join trade unions and to serve on their governing bodies, as stipulated by the Convention? Given the large number of Colombians abroad, what steps had the State party taken to prevent brain drain? How did the State handle the situation of Colombians abroad – did any institution have responsibilities in that area?

Paragraph 25 – What was Colombia’s policy on irregular migration?

Paragraph 26 – What was done with regard to unaccompanied or separated Colombian migrant children who returned to or were sent back to the country?

Paragraph 27 – Were there shelters for victims of trafficking? Did Colombia have any strategy in that area? With respect to migration control, what was being done by the State party to ensure that the children of migrant workers left the country with their identity papers in order? Did minors leaving the country have to have a passport? How were migrant workers transiting through Colombia treated?

13. **Mr. Kariyawasam** said he welcomed the introductory statement and the comments made, yet regretted the incomplete nature of the Colombian delegation, specifically the absence of anyone from the country’s capital. Since a great many countries were not parties to the Convention, he wondered how Colombia ensured protection of the rights of Colombian migrant workers in such countries that were countries of destination. Referring to the general reservations that Colombia had made to articles 15, 46 and 47 upon ratifying the Convention (1995), he asked whether they were to be withdrawn and what Colombia’s position was on that subject. What steps were the State party taking or planning to take to discourage illegal migration and trafficking in persons? Had the actions of the guerrillas and paramilitary groups had any impact on illegal immigration and trafficking in persons?

14. **The Chairperson** pointed out that Ms. Vargas was from the capital and that she headed the Department of Multilateral Affairs within the Ministry of Foreign Relations.

15. **Mr. Alba** congratulated Ms. Vargas on her wide-ranging introductory statement and direct replies on issues raised by the Committee. He also noted with approval the importance that Colombia attached to the subject, as could be seen from the many institutions it had set up. As he understood it, international conventions were on an equal footing with the Constitution in Colombia, and that surprised him, since it was not usually the case in other States. In the context of implementation of the Convention, he pointed out that subsidiary instruments should incorporate all its provisions and must be coherent at all levels. Additional information and facts on that subject would be useful.

16. He wondered why Colombia adopted “administrative sanctions” with respect to migrant workers found to be in an irregular situation, which appeared to mean that that was not an offence. He would like to know more about the 36-hour time limit on detention of migrants and on the places of their detention. He had seen that there was a National Intersectoral Migration Committee but did not precisely understand the role and activities of the body called CONPES. As he understood it, the integrated migration policy was concerned solely with matters relating to emigration. Referring to the Andean Community, he asked if there was a migration regime within it, if nationals of countries of the

Community could work freely in other member States and if the social security rights they acquired could be transferred to their country of origin.

17. **Ms. Poussi** asked whether, instead of deporting migrant workers who refused to meet their financial obligations towards natural or legal persons or had been fined several times in the course of a year, other steps might be envisaged, such as seizure of their property. She also wished to know whether migrant workers whose property was expropriated for reasons of equity could receive compensation and which civil rights aliens might be prohibited from exercising. Lastly, she asked what the Colombian Government was doing to guarantee the right to vote of Colombians residing abroad.

18. **Mr. Brillantes** asked whether the rights enshrined in the Convention were upheld in the entire corpus of the State party's legislation. Had it been necessary for the Convention's provisions to be transposed into domestic legislation, or had that legislation already guaranteed the rights set out in the Convention before the Convention had been ratified? He also wished to know whether, in the State party's view, Colombian migrant workers in an irregular situation were still, nine years later, suffering the repercussions of the 11 September 2001 attacks and whether they were frequently equated with criminals or terrorists in the receiving country. He wished to know what role placement agencies played in the migration process, whether the Government regulated their activities and whether criminal groups had undue influence on the placement of migrant workers, whether in a regular or irregular situation, as that might constitute a problem for the State party.

19. **Mr. El-Borai** requested more information on expropriation for reasons of equity, mentioned in paragraph 1 of the State party's report (CMW/C/COL/1). He would also like clarification of the State party's replies concerning articles 32 and 33 of the Convention (CMW/C/COL/1/Q/Add.1). Specifically, in view of the reservation Colombia had made upon ratification of the Convention, through which it retained the right to promulgate taxation, exchange and monetary regulations establishing equality of treatment of migrant workers and members of their families with that of Colombian nationals in respect of the import and export of personal and household effects, the transfer of earnings and savings abroad, he wished to know whether the State party intended to adopt laws that went against the Convention.

20. **The Chairperson**, speaking as a member of the Committee, said that paragraph 43 of the State party's written replies to the list of issues identified the authorities responsible for providing information to Colombian nationals preparing for labour migration and to foreign migrant workers and members of their families residing in Colombia. How did they arrange the dissemination of such information? He also wished to know whether children born in Colombia of undocumented migrant parents were inscribed in the civil register and what the State party meant by the word "domiciled" when saying that a child born in Colombia of foreign parents could acquire Colombian nationality as long as one of the parents was domiciled in Colombia. Noting that the State party had indicated in its written replies that it had no statistics on the number, gender and nationality of frontier and seasonal workers, he asked whether such workers enjoyed such social rights as the right to be affiliated with pension schemes, as that would make it possible to collect statistics. If not, had the State party any plans to take steps in that direction?

21. He was surprised by the contradiction between paragraphs 87 and 88 of the State party's written replies (CMW/C/COL/1/Q/Add.1). Since, as the State party indicated, the repatriation of a Colombian child was carried out through coordination between the authorities of the foreign country concerned and the Colombian consular authorities, there must certainly be data on the number of unaccompanied or separated Colombian migrant children who had returned or been returned to Colombia on account of their irregular status. The State party might wish to reflect on how to go about collecting such data. He also asked if the "Colombia Nos Une" ("Colombia Unites Us") programme was subject to

evaluation and if all the steps envisaged had been carried out and results obtained – for example, concerning the use by Colombian migrant workers in the United States of their consular registration card as an identification document.

The meeting was suspended at 4.45 p.m. and resumed at 5.15 p.m.

22. **Ms. Vargas** (Colombia) said that Colombian children who wished to leave the country had to have a passport, which the parents could obtain from the passport offices of the Ministry of Foreign Affairs by providing civil status documentation proving their parenthood. If the child wished to leave Colombian territory unaccompanied, he or she must have a duly certified parental authorization. In the absence of a parent or guardian, it was the Ministry of Social Protection that authorized the issuance of the passport. In conformity with article 14 of the Constitution on the right to recognition of one's legal personality and article 44 on the right of a child to have a name and a nationality and not to be separated from his or her family, and in conformity with the provisions of the Convention on the Rights of the Child, the children of foreigners, including those whose parents were in an irregular or undocumented situation, could have their births inscribed in the civil register. In Colombia, a newborn child was registered by the authorities, not at the town hall, but at the National Civil Registry or by a notary. Both were independent from the Executive. Notaries had no policing functions, and an irregular or undocumented migrant worker who went to have his or her child's birth registered thus did not need to fear arrest.

23. The international instruments that the Government planned to ratify were approved by Congress and then by the President of the Republic, who submitted the text to the Constitutional Court. The Court assessed the instrument from the standpoint of its conformity with the Constitution and verified that the ratification process had been respected, meaning that the ratification had been duly discussed and the relevant texts published in a timely manner. Article 4 of the Constitution stated that that instrument was the supreme law. The Constitution stipulated elsewhere that international human rights instruments that had been ratified were immediately applicable and had the same rank as the Constitution itself. That was the case with the International Covenant on Civil and Political Rights and the American Convention on Human Rights. The body of standards thus created militated against implementation of legislation that was contrary to the provisions of any international human rights instrument ratified by Colombia. Any citizen who felt that certain pieces of legislation infringed any of his or her rights could have recourse to the Constitutional Court, which then scrutinized the legislation in question with reference to the Constitution and the international instruments that had been ratified. Colombian judges could decide not to apply a provision that they felt was not in conformity with the Constitution. Thus, with regard to the inscription of newborn children in the civil register, Colombia was complying with the provisions of the Convention on the Rights of the Child.

24. Under the Constitution, a child born on Colombian territory to foreign parents could acquire Colombian nationality only if the parents had chosen to be domiciled in Colombia: in other words, if they had legally entered the country. Parents in an irregular situation could inscribe their child's birth in the civil registry, but the child would not be granted Colombian nationality. It had recently become possible for children born of Colombian parents abroad to obtain Colombian nationality if they were declared at the Colombian consulate in the country of their birth, so as to avoid the problem of statelessness. The Congress of the Republic was currently reviewing the Convention on the Reduction of Statelessness and the Convention relating to the Status of Stateless Persons, and when they were ratified, that would help to resolve any problems of that nature.

25. Migration policy was coordinated at national level primarily by the Ministry of Foreign Affairs, which issued visas, and the Administrative Department of Security (DAS), which approved or rejected the entry into the country of persons not required to hold a visa.

The National Intersectoral Migration Committee had been set up to more fully address the various aspects of migration (economic, social, cultural, etc.) and to promote concerted efforts by the various bodies concerned. In it were discussed problematic cases with a view to reaching consensus or, where that was impossible, to seeking to modify the rule that was causing problems or to interpret it in such a way as to remove the difficulties.

26. Colombians living abroad could vote in elections for the President and the Senate but not, for example, in municipal elections. An international constituency had recently been established so that they could vote for a seat in the House of Representatives. When information on elections was published (dates, candidate profiles, etc.), Colombians residing abroad could inscribe their names on the electoral roll in their local embassy or consulate.

27. The principle of freedom of movement was written into the Colombian Constitution, but the Administrative Department of Security nevertheless would bar individuals under warrant for arrest or having failed to comply with a court decision, such as on payment of child support, from leaving the country.

28. The dissemination of the Convention was carried out mainly by the bodies responsible for migration matters. There was no training programme for officials. Information brochures on the rights of Colombians abroad were available through the consular services. Those efforts, laudable as they were, remained inadequate: training courses should be organized for those who dealt with migrants in order to give them a better understanding of the Convention and its implementation. There were relatively few migrant workers now in Colombia, and still fewer in an irregular situation, which was why the country was not well prepared for meeting the wants and needs of immigrants: most of its efforts, it must be admitted, focused on the rights of Colombians abroad.

29. A person could be detained in a holding centre for a maximum of 36 hours, and only by a judge's decision could that term be prolonged. Such detention generally occurred, not after an offence, but after an administrative irregularity that might be subject to a penalty like a fine. If the person had not paid the fine within 36 hours, then he or she was expelled. Sometimes, for lack of resources, the expulsion was not carried out by the authorities and the person remained in Colombia in an irregular situation. If a person was detained longer than 36 hours, he or she could file a habeas corpus action.

30. No one could have his or her papers confiscated in Colombian territory except if it was discovered during an investigation that false papers were to be submitted as evidence before a judge. Deportation, a measure rarely adopted owing to lack of resources, was generally the result of an administrative act by the Administrative Department of Security and could be subject to two types of administrative appeal: an appeal for review by the institution that had adopted the decision, which then had five days to reverse its decision, or an appeal to a higher authority. Expulsion was the result of a decision by any competent authority. It might be ordered with regard to a person who had been refused entry but had disregarded that prohibition or had failed to leave the country after serving a custodial sentence. It was not subject to appeal. On grounds of public order or public security, the Ministry of Foreign Affairs could revoke a visa that had already been issued. There again, no appeal was possible.

31. The National Economic and Social Policy Council (CONPES), consisting of representatives of the President and of the various ministries concerned with the subject to be discussed, was responsible for adopting public policy. The policy on migration had initially been reviewed by the National Intersectoral Migration Committee; the Council had then formulated a number of "CONPES documents" on various aspects of the policy (human rights, labour, etc.), which enabled the funds required to implement the policy to be released.

32. The “Colombia Nos Une” programme, under the Ministry of Foreign Affairs, sought to coordinate consular activities with a view to making migration policy more dynamic. It was true that so far, it had primarily been directed at Colombians abroad. CONPES, which was to approve the programme very soon, should be apprised of that so that if Colombia received a great many immigrants in future, it would be better prepared.

33. To protect the rights of Colombians abroad, the Government relied primarily on the Vienna Convention on Diplomatic Relations. It had established a number of mechanisms to give its foreign diplomatic services assistance from competent specialists, for example, legal counsellors, who were knowledgeable about the local situation. The diplomatic services were also in contact with civil society, for example NGOs working with migrants. Contrary to what might be expected, the fact that most countries that received Colombian migrants had not ratified the Convention was not a major problem, since in most instances such countries had adopted a number of other international instruments that proclaimed the rights set out in the Convention. The Colombian authorities organized many social and cultural activities designed to enable Colombians abroad to retain ties with their culture, their families at home and their country. One of the favourable effects of migration was the opportunity for professional improvement. In addition to networks of specialists, Colombia had established a grants system so that students could study abroad, as long as they committed themselves to returning home upon completion of their studies.

The meeting rose at 6 p.m.