

## **COMMITTEE ON THE RIGHTS OF MIGRANT WORKERS CONSIDERS THE REPORT OF ECUADOR 5 SEPTEMBER 2017**

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### **Body**

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The Committee on the Protection of the Rights of All **Migrant** Workers and Members of Their Families today concluded its consideration of the third periodic report of Ecuador on its implementation of the International Convention on the Protection of the Rights of All **Migrant** Workers and Members of Their Families.

Introducing the report, Jose Luis Jacome, Vice Minister of Foreign Affairs and Human Mobility of Ecuador, noted that Ecuador promoted the right to human mobility in all international fora. Ecuador's Human Mobility Act of February 2017 had been saluted by various specialised international agencies for its harmonised approach to the protection of human rights. The Act, centred on a human rights-based approach, involved various sectors of the **society**, such as the civil **society**, public institutions and international organisations specialised in human mobility, and it recognized the **migrants'** rights to employment and social security, and to free movement across the country.

Also introducing the report, Andres De La Vega, Deputy Minister of Interior Affairs of Ecuador, underlined that human mobility was treated as a right which required the State to protect, to care for and to fully integrate **migrants** in **society**, without any discrimination. To that end, Ecuador had established minimum requirements for the entry into the country, due process in case of deportation, abolition of deprivation of liberty for irregular **migrants**, and the provision of voluntary departure from the country for persons who had not regulated their migration status.

In the ensuing discussion, Experts commended Ecuador's migration policies, its great efforts to protect the rights of **migrant** workers, and the right attitude to integrate **migrants** and respect their rights through real policies. Nevertheless, they added that the Government still needed to strengthen education and awareness raising in that respect. Experts inquired about the mechanisms and resources for the implementation of the Human Mobility Act, its scope of application and its cross-sectoral mainstreaming, and the civil **society's** participation in the development of the Act. They raised the issues of the legal basis for the entry refusals at Ecuador's international airports, migration status and categories, detention of **migrant** children, and the detention and deportation of Cuban nationals in 2016. The delegation was also asked about the free legal counsel for **migrants** and their access to justice, and the legal means to contest deportation decisions; the availability of healthcare to **migrants** and their labour and social protection rights; border integration programmes with neighbouring countries; ways to regularise the situation of irregular **migrants**; and about trafficking in persons for labour exploitation.

In his closing observations, Pablo Ceriani Cernadas, Committee Expert and Rapporteur for Ecuador, commended the positive steps taken by Ecuador and in particular the adoption of the Human Mobility Act, and noted the need to provide adequate resources for its effective implementation, and ensure its cross-cutting mainstreaming. The Committee was very interested in how that implementation process would take place, and was ready to cooperate and assist the Government in that endeavour.

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Jose Brillantes, Committee Chairperson, thanked the delegation for their frank and well researched responses, and for the constructive dialogue with the Committee which had provided further insight into the situation of migrant workers in Ecuador.

Mr. Jacome in his concluding remarks, underlined the important role of human mobility in the construction of civilisations as migrants had much to contribute to their host communities. That was why States needed to prioritise the adoption of adequate characterisation of persons on the move, and also prioritise the creation of policies that adequately met their needs.

The delegation of Ecuador consisted of representatives of the Ministry of Foreign Affairs and Human Mobility, Ministry of the Interior, Office of the Attorney General, and the Permanent Mission of Ecuador to the United Nations Office at Geneva.

The Committee will next meet in public at 3 p.m. today, 5 September, to consider the initial report of Indonesia (CMW/C/IDN/1).

### Report

The third periodic report of Ecuador can be read here: CMW/C/ECU/3.

### Presentation of the Report

JOSE LUIS JCOME, Vice Minister of Foreign Affairs and Human Mobility of Ecuador, noted that Ecuador promoted the right to human mobility in all international fora. Since the end of the 1990s, the country had seen very complex migration phenomena which had required the introduction of comprehensive policies. A large number of foreign nationals had arrived in Ecuador, seeking better opportunities and requiring international protection. Most of them had come from Colombia. At the same time, hundreds of thousands of Ecuadorians had emigrated to North America due to economic reasons. In the past few years, Ecuador had taken steps for the successful return of some migrants to their countries of origin. The Human Mobility Act of February 2017 integrated various dispersed laws into a single act. It had been saluted by various specialised international agencies for its harmonised approach to the protection of human rights. The development of the Human Mobility Act was based on a human rights-based approach, involving various sectors of society, such as civil society, public institutions and international organizations specialised in human mobility. At the moment, Ecuador was home to the greatest number of refugees in Latin America, namely 60,253 of them, as well as some 200,000 asylum seekers. The Human Mobility Act recognized their right to employment and social security, and refugees in Ecuador were free to move across the country and received generous assistance and integral protection.

The Government recognised that there were new structures that needed to be consolidated in order to guarantee the sustainability of human mobility. One of the challenges was the mainstreaming of human mobility in all public policies, plans, programmes and services. Another challenge was to continue with the following phases of the National Integrated System of Information on Human Mobility, which sought the cooperation of information systems across national institutions dealing with human mobility in order to improve the quality of services. Ecuador maintained its commitment to work toward the adoption of international instruments on human mobility, and it insisted that those instruments had to be elaborated by all States. Human mobility was a priority for Ecuador's national and international agenda, Mr. Jacome concluded.

ANDRES DE LA VEGA, Deputy Minister of Interior Affairs of Ecuador, explained that Ecuador had placed in practice the concept of comprehensive security, which was the vision aimed at protecting and guaranteeing human rights and fundamental freedoms of all persons. Human mobility was treated as a right which required the State to protect, to care for and to fully integrate migrants in the society, without any type of discrimination. In that respect, the Government had established minimum requirements for entry into the country, due process in cases of deportation, abolition of deprivation of liberty for irregular migrants, as well as the provision of voluntary departure from the country for persons who had not regulated their migration status. Ecuador also prioritised the fight against trafficking in persons and illegal trafficking of migrants, and to that end the Government had come up with the

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National Plan to Combat Trafficking and Sexual and Labour Exploitation, with a particular focus on women, children and adolescents, and on protection and reparation, prevention, investigation and sanctions. The fight against trafficking in persons could not be carried out without international cooperation, and to that end Ecuador had reached agreements with Peru and Colombia.

### Questions from the Committee Experts

PABLO CERIANI CERNADAS, Committee Expert and Rapporteur for Ecuador, raised the issue of the alignment of national laws with the Convention provisions. What were the mechanisms and resources for the implementation of the Human Mobility Act? How would the mainstreaming of the Human Mobility Act and its cross-cutting implementation be achieved? What was the institutional structuring and mandates in that respect, and specifically the role of the National Council for Equality in the area of human mobility?

What had happened after the closure of detention centres for migrants and had there been any compensation granted? What was the legal basis for temporary detentions at the airport in Quito? There were some private actors that intervened in those procedures.

As for the case of Manuela Picq, what was her status and what were the grounds for denying her entry to Ecuador? With respect to temporary detention and deportation of Cuban nationals in 2016, had there been an exhaustive and independent investigation of that case and had there been any compensation granted? With respect to expulsions, the law did not provide any judicial means for challenging of those decisions.

What programmes had been introduced to promote and guarantee free and effective legal counsel to migrants? The Rapporteur also asked the delegation to clarify the deadline of 30 days established by the Human Mobility Act for migrants to regularise their status. What did they have to present? How was it determined that someone represented a security threat?

A Committee Member inquired about the number of migrants who died or disappeared along the way. What sort of agreements did Ecuador have with countries on that information? What kind of support was provided to those who wanted to reintegrate into the countries of their origin?

Another Expert inquired about the State party's position on the possibility to present individual cases to the Committee. She also asked about data collection on migrant workers and about the engagement of the national human rights institution in monitoring and protecting the rights of migrants. What type of training and information provision about the Convention had been provided? What type of cooperation did the Government engage in with civil society? What kind of consular assistance was provided by the Government? Why did the Human Mobility Act oblige migrant workers to obtain mandatory healthcare insurance?

A Committee Expert recognized Ecuador's efforts to respond to the challenges of migration and relevant legislative reforms. He raised questions about the percentage of returning Ecuadorians and support for their social and economic reintegration. What was the exact decline in remittances? In view of returns, there were Ecuadorians who were forced to leave the country due to economic challenges faced by Ecuador. Were there training programmes to support the Ecuadorians leaving the country? What were the main aspects of the border programme with Peru? Was there any difference between the roles of the Ministry of Foreign Affairs and the Institute of Human Mobility?

More information was requested about the policy for recruiting Ecuadorians abroad. Did foreign workers in Ecuador enjoy protection for themselves and their children? Were remittances facilitated for Ecuadorians working abroad? Did their children born abroad benefit from the same rights as those born in Ecuador? Were there any programmes and strategies for supporting the reintegration of Ecuadorians working abroad?

A Committee Member commended Ecuador's migration policies. Nevertheless, he raised the issue of the participation of civil society in the preparation of the report, as well as the issue of detention of migrant children. What was the number of migrant children detained in Ecuador? Why were they detained and how were they detained? Many Ecuadorians returned to their country of origin from Spain following the economic crisis. What kind

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of assistance had they received upon their return? Was there a dialogue about the changes in the Human Mobility Act and what would be the future of that law?

An Expert welcomed the remarks of the Government of Ecuador on universal citizenship and the elimination of the notion of "foreigner." However, what was being done to regularise the situation of irregular migrants in the country, in particular of migrant children? What was the rate of school enrolment of migrant children and their access to healthcare? In view of the fact that Haitian migrants suffered from discrimination, what steps had been taken to prevent that?

JOSE BRILLANTES, Committee Chairperson, asked for clarification on the newly coined term "anti-Colombianism" in Ecuador. Was it true that the Human Mobility Act only applied to documented migrants and if so, why?

#### Replies by the Delegation

JOSE LUIS JCOME, Vice Minister of Foreign Affairs and Human Mobility of Ecuador, explained that each department of the Government had to come up with programmes to mainstream the principles of human mobility in all their projects and services. The cross-cutting nature of the Human Mobility Act had been developed in cooperation with the International Organization for Migration. The Government had held dialogues with many communities to that end. There was a specific body dealing with the reintegration of returning Ecuadorians. The Government was committed to creating a culture of peace and integration in the country, and thus combatted anti-migrant stereotypes and feelings through awareness raising programmes in schools. The Government was trying to include human mobility issues in school curricula in order to promote safe and orderly migration.

As for Ecuador's efforts to provide consular protection, most Ecuadorians abroad received legal assistance and support, as exemplified by the work done in the context of the mortgage crisis in Spain. There was also a contingency plan for Ecuadorians living in the United States, in view of the policies that affected not only Ecuadorians, but also all other nationals of Latin American countries. There were 22 mobile consulates and personnel had been sent out to provide support in communities.

ANDRES DE LA VEGA, Deputy Minister of Interior Affairs of Ecuador, noted that the Human Mobility Act was an important step in the country's legislative reform process because for the first time it had set up institutions to specifically deal with issues of migration, as well as trafficking and smuggling of persons. It was clear who was in charge and what mechanisms linked different activities within the area of migration. As for the institutional framework for human mobility, great strides forward had been made. For the first time, Ecuador had a body responsible for trafficking in persons. The Government was reforming its policies, but it was humble about making progress. There were no more detention centres for migrants because under law migration was no longer seen as a crime. Unlike previously, new legislation provided for due process in the treatment of migrants' status.

As for the case of Manuela Picq, she had not been deported from Ecuador, but left of her own accord. She had asked for a type of visa that was inconsistent with her status. There was nothing that prevented her from coming back to Ecuador. With respect to detained Cuban nationals, Mr. De la Vega clarified that no children had been detained in that process. They had been sheltered, but not detained. Hundreds of thousands of Cubans in a regular situation remained in Ecuador, and only those in irregular situation had been deported. Those deported Cubans sought to obtain a visa to enter the United States and the Government did not want to encourage such risky migration.

According to the Human Mobility Act, expulsion could be applied to persons who had been sentenced to a prison sentence of more than 10 years. As for the determination of the security threat, the Government focused on the security of human beings rather than on the security of the State. If it was found that someone was previously involved in crimes, then they represented a threat to society. All migrants, regardless of their regular or irregular status, received healthcare services.

The delegation further clarified that in line with the Constitution of 2008, the Government had been strengthening the protection of human rights. There had been a qualitative leap in terms of the protection of migrants' rights. The

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Government did not criminalise migration and legal assistance had to be provided in case of deportation procedures. The Office of the Attorney General provided assistance to migrants in all situations.

In principle, the Government of Ecuador looked favourably on the possibility to present individual cases to the Committee. As for remittances, there had been an increase in the period between 2015 and 2016. The Ministry of Education had undertaken a number of campaigns to involve migrant children in the education system, and to recognize foreign studies, diplomas and degrees.

JOSE LUIS JCOME, Vice Minister of Foreign Affairs and Human Mobility of Ecuador, stressed that the Convention was a fundamental point of reference in drawing up the Human Mobility Act. It was still a challenge to consolidate the information exchange between different Government departments dealing with human mobility. Mr. Jacome underlined that no one was excluded from healthcare based on their migration status. A wide-range regularisation of migrants' status had taken place in 2010 and 2011, and had continued between 2015 and 2017.

### Second Round of Questions by the Committee Experts

A Committee Member raised the question of civil society's participation in the development of the Human Mobility Act. He also inquired about the rights of migrant workers in the labour sector, namely trade union rights and social security rights.

PABLO CERIANI CERNADAS, Committee Expert and Rapporteur for Ecuador, inquired about the border procedures with Colombia and Venezuela. How was the recognition of the right to migrate under Ecuador's Constitution implemented? How come visas remained in place? What was the situation of agricultural workers in northern Ecuador?

Did the Government deal with trafficking in persons for labour exploitation in an adequate manner? The Rapporteur underscored the interplay between the right to health and migration status, and he raised the issue of the entry of unaccompanied minors.

### Replies by the Delegation

JOSE LUIS JCOME, Vice Minister of Foreign Affairs and Human Mobility of Ecuador, explained that before the adoption of the Human Mobility Act, the National Assembly had engaged in a broad discussion with national and international stakeholders to ensure that it met the needs of various concerned groups, and to provide a democratic and participatory opportunity to contribute to the draft. The Government had organised some 30 events for the purpose of so-called socialisation, and some 15 international organisations, as well as migration experts, had taken part in the process. The Human Mobility Act had been properly publicised, and a roundtable on human mobility had been held in June 2017. The dialogue with all the stakeholders was an ongoing process, stressed Mr. Jacome.

Ecuador was pushing forward with the implementation of the social security bilateral agreements with different countries to protect the rights of migrants everywhere and it upheld the principle of equal treatment for everyone, foreigners and Ecuadorians alike. With respect to the migration status and categories, Ecuador sought to cover the largest number of migrant workers and meet their particular needs. Workers' right to human mobility was guaranteed by the Human Mobility Act, and the migration status was regulated through different types of residence permits. Migration categories varied according to different forms of temporary or longer stay in the country, and were intended to facilitate orderly and safe migration. Border integration programme simplified procedures for the stay in Ecuador were in place with the neighbouring Colombia and Peru, he concluded.

ANDRES DE LA VEGA, Deputy Minister of Interior Affairs of Ecuador, stressed that Ecuador fought against all forms of trafficking in persons and not just trafficking for sexual exploitation, and said that some 12 per cent of the rescued victims had been subjected to labour exploitation. All Government plans in this regard had to be aligned with the National Development Plan and were updated every four years, including the strategy of the Ministry of Internal Affairs for the fight against trafficking in persons. The Ministry of Internal Affairs would be working to

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strengthen the capacity of shelters for trafficking victims and had in place a witness protection programme to identify victims of trafficking.

Clarifying the concern raised about the refusal of entry at the international airports in the country, Mr. De la Vega said that the decision could now be appealed and that due process was guaranteed, which was an important step forward for the people whose entry into the country had been denied. Security reasons were never used to refuse entry, he said, stressing that there was a change in the security paradigm: the police no longer focused on the security of the State but on the security of people. The police previously had a strong military component, whereas nowadays they focused on the community. The refusal of entry to persons involved in organised crime was justified because they could pose threat to citizens' human rights.

The delegation noted that there were special standards and additional protection measures for victims of discrimination, especially nationality-based discrimination: all workers, including migrant workers, were protected by the social security system and employers were subjected to fines should they pay migrant workers differently from the nationals. Holders of temporary residence permits had to respect the time framework, so those overstaying their permits might be liable to a fine. Human rights training, including on the protection of vulnerable groups, gender crimes and trafficking, was constantly provided to judges and legal personnel.

As for the right to health, public and private health establishments in the country could not deny emergency medical treatment to anyone based on their nationality. Efforts were underway to establish universal health coverage. In the border areas, there were healthcare services for people on the move, namely asylum seekers and refugees. With respect to the protection of unaccompanied minors, officials who first came into contact with them had to ensure their referral to relevant protection services, including psychological support and accommodation.

### Third Round of Questions by the Committee Experts

Experts observed that Ecuador had made great efforts to protect the rights of migrant workers and commended the right attitude to integrate migrants and respect their rights through real policies, but noted that education and awareness raising still needed to be strengthened in that respect.

As for the political participation of Ecuadorians abroad, did they have the right to vote in elections and how could they vote? How was that right guaranteed?

Could migrant workers in Ecuador belong to trade unions? What were the concrete examples of migrant workers' participation in the management of trade unions?

Had there been any complaints by migrant workers about employment discrimination?

PABLO CERIANI CERNADAS, Committee Expert and Rapporteur for Ecuador, inquired about the reasons behind the denial of visa extension to Manuela Picq, and about an independent investigation into the deportation of Cuban nationals where it seemed that the executive branch had overturned the decision of the judicial branch. How could the Government regularise the situation of migrants working in the informal sector?

Many migrant workers were in a very vulnerable situation, so fining them would worsen their situation, Mr. Ceriani said and asked what happened to those migrants who failed to pay fines. What types of residence permits could the Venezuelans in border areas apply for?

How did the Government ensure that migrants had representatives on the Council for Equality and Human Mobility? What were the results of the specific regime for Peruvian mine workers and Colombian agricultural workers, asked Mr. Ceriani.

Was there an active policy in Ecuador to promote migration? Did the Government encourage youth to stay and seek employment at home?

Replies by the Delegation

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JOSE LUIS JCOME, Vice Minister of Foreign Affairs and Human Mobility of Ecuador, underlined that the principles of non-discrimination and equality were enshrined in the Constitution and that a migrant was a person with equal rights in the country. Ecuadorians living abroad exercised their right to vote. The Government facilitated the regularisation of the migration status, but it also expected that the legal provisions and deadlines be respected. At the moment, all relevant regulations and requirements were not accessible through a single window. Exceptional visas were provided in cases of unforeseen circumstances, said Mr. Jacome, noting that the regulations could not foresee all the scenarios and situations in which people on the move found themselves.

GUILLAUME LONG, Permanent Representative of Ecuador to the United Nations at Geneva, noted that the deportation of Cuban nationals in 2016 was an extreme situation; the decision to deport them had resulted from a specific regional context, and an effort had been made to least undermine their human rights. At the time, and following the negotiations between Cuba and the United States, various countries in the region deported thousands of Cuban nationals, under an assumption that the re-establishment of diplomatic relations between these two countries would put an end to the favourable treatment of Cuban migrants in the United States. The Cuban nationals had asked Ecuador to facilitate their passage to the United States, and the Government of Ecuador had deemed their request risky because they might not be admitted to the United States.

The case of Manuela Picq was in no way a migration issue, Mr. Long emphasized and said that she could always enter Ecuador. Ms. Picq had a political cause and wanted her traditional marriage recognised in a manner that was contrary to the Ecuadorian law.

ANDRES DE LA VEGA, Deputy Minister of Interior Affairs of Ecuador, said that in June and July 2017, a significant number of Venezuelan nationals had arrived in Ecuador and had received adequate assistance and treatment. The Government had to strengthen its capacity to deal with such migratory flows. Many registered cases of labour exploitation involved Venezuelans working in precarious conditions.

The delegation said that the participation in a trade union was open to everyone, including foreigners. The deportation decisions could be contested administratively and judicially, and appeals were a way to enforce citizens' rights.

In his follow up questions, PABLO CERIANI CERNADAS, Committee Expert and Rapporteur for Ecuador, stressed the importance of clarifying the deportation of Cuban nationals in 2016 because of its impact on the rights of migrants. Raising the issue of the migrants' access to justice, Mr. Cernadas asked how they were informed about the decisions taken with respect to their status.

Responding, ANDRES DE LA VEGA, Deputy Minister of Interior Affairs of Ecuador, explained that the Government had to notify migrants about their irregular situation, following which the migrants had 30 days to regularise their status, or stand a hearing in case they did not reply to the call for regularisation.

#### Concluding remarks

PABLO CERIANI CERNADAS, Committee Expert and Rapporteur for Ecuador, commended the positive steps taken by Ecuador and in particular the adoption of the Human Mobility Act, and noted the need to provide adequate resources for its effective implementation, and ensure its cross-cutting mainstreaming. The Committee was very interested in how that implementation process would take place, and was ready to cooperate and assist the Government in that endeavour. The legislative framework was in place in Ecuador, but the Government needed to show its practical influence on the lives of migrants.

JOSE BRILLANTES, Committee Chairperson, thanked the delegation for their frank and well researched responses, and the constructive dialogue with the Committee, which had provided further insight into the situation of migrant workers in Ecuador.

JOSE LUIS JCOME, Vice Minister of Foreign Affairs and Human Mobility of Ecuador, took due note of the Experts' comments, and then underlined the role of human mobility in the construction of civilisations as migrants had much

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to contribute to their host communities. That was why States needed to prioritise the adoption of adequate characterisation of persons on the move, and also prioritize the creation of policies that adequately met their needs. Human mobility had to go hand in hand with the protection of human beings and Ecuador called on the international community to consider the universal and multidimensional nature of human mobility.

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