SHADOW REPORT ON COMPLIANCE WITH THE INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES (ICMW)

ECUADOR 2017

Presentation:

In July 2016, the Coalition for Migration and Refugees, made up of different NGOs, institutions, academic institutions and individuals working on promoting and protecting human rights, sent in a first document that addressed the main concerns that at the time were identified about the Ecuadorian State's compliance with the ICMW. Likewise, the Coalition attended the preparatory meeting via videoconference and explained the issues set out in the document.

This time, given that the Committee sent the list of questions to the Ecuadorian State in September 2016, which covered, to a large extent, the concerns voiced by the Coalition for Migration and Refugees, and which in May 2017 the Ecuadorian State replied to, we would like to present our concerns regarding compliance with the ICMW, which we feel need to be explained more in depth, along with some general recommendations that might be presented to the Ecuadorian State to help them improve their compliance with the Convention.

1. Adaptation of Legislation

Organic Law on Human Mobility (OLHM) and its Regulations (Reg. OLHM)

The Organic Law on Human Mobility (OLHM) became effective on 6 February 2017 and on 3 August 2017 the Regulations were signed into force by the President. This new legislation replaces the Migration Act and the Immigration Act, in force since 1971. Nevertheless, the OLHM still contains some elements from the previous legislation that contravene the articles in Ecuador's Constitution (CRE) regarding human mobility, and the principles and rights enshrined in the ICMW and in other international human rights instruments. Among the main concerns regarding this law are the following:

a) *Provisions that contravene the principle of equality and no-discrimination.*

Despite the fact that the Constitution specifically recognises equal rights and duties for all Ecuadorians and people of other nationalities (Art. 9 CRE), and the principle of non-discrimination on the basis of nationality, immigration status or criminal record (Art. 11. 2 CRE), progressive end of alien status, universal citizenship and other principles that underpin equal rights for all are being progressively deconstructed. The OLHM deals with foreign nationals in a way that is not in line with these principles and may lead to discrimination. For example:

- A foreigner is defined as someone who "has migrated temporarily or is a resident" (Art. 42 OLHM). This is serious as it only recognizes a foreigner as someone whose immigration status is "regular", which may lead to interpretations that restrict people exercising their rights.

- The OLHM (Art. 3.1) limits the term "immigration status" to those whose status is "regular", which precludes the constitutional principle of non-discrimination on the basis of immigration status by excluding those whose status is "irregular". This opens up the possibility that their rights may be

restricted, which also contradicts General Observation 18 of the Inter-American Commission on Human Rights.

- The OLHM makes it compulsory for all foreign nationals in Ecuador to "have public or private health insurance" (OLHM Arts. 52, 53.7, 55, 61 and 64), which is disproportionate and has no legal fundament. It contradicts the principle of equality and non-discrimination between nationals and foreign nationals as Ecuadorians are not obliged to have health insurance. This provision makes it difficult for foreign nationals to apply for residence because of the cost of insurance, especially where whole families are concerned.

- The OLHM still sees foreign nationals as a potential threat to State security. In seven articles the following phrase is repeated: "Not being considered a threat or risk to internal security, according to information available to the Ecuadorian State" in order to be able to exercise certain rights. The wording of this provision enables the State to be subjective and discretionary because of the terms "threat or risk" being so ambiguous, and the type of "information" referred to is unclear. This condition is established for people to enter Ecuador (Art. 137.6), receive temporary and permanent residency (Art. 61.4, 85.3 and 64.4), become naturalized (Art. 79.3), and even to be recognized as a refugee (Art 104.4)

b) Provisions that make it difficult to regularize immigration status and lead to people finding themselves with an irregular immigration status.

Despite the Constitution's stance on human mobility, the OLHM maintains the traditional classification of categories of migrants and visas from the derogated legislation. The categories established in the OLHM maintain the principle of selectivity and make it difficult for foreign nationals to apply for residence. The provisions hark back to the previous legislation and so immigrants find it impossible to fulfil the requirements to obtain a visa and hence cannot exercise their rights under the same conditions as nationals; on the contrary, they are forced to avoid immigration control and face deportation. There are increasing reports of people not being able to meet the requirements and pay the fees when applying for residence.

In addition, this means that Ecuador does not know how many foreign nationals reside in the country, as can be inferred from the official report presented to the Committee.

On the other hand, the difference made between people from the UNASUR[1] countries and those from other countries is an unjustified differential treatment relating to exercising rights and applying for residence.

The following are examples of this differential treatment:

- The requirement to prove "licit means of living in the country" when applying for residence in Ecuador for all immigration statuses (Art. 56, 61.5, 64.5, 86.6 of the OLHM) was not included in previous legislation and as it is an undetermined legal concept it leads to discretionality as it is not clear what it is asking the applicant for and how it is to be proven. This has led to many people not being able to fulfil this requirement, mainly those immigrants working independently in the informal sector.

[1] Union of South American Nations

- This requirement has more serious implications for those people applying for a visa on the grounds of having Ecuadorian children or relatives (Art. 63.4 OLHM). This is regressive as it was not a requirement previously (it was enough simply to prove the relationship for the visa to be issued). This new requirement is a hurdle for those applying on the basis of kinship as not everyone can fulfil it. This article contravenes the principle of family unity and other principles, such as the best interest of the child and the child's right to a family.

- The OLHM does not allow those with irregular immigration status to reappraise their situation, but rather requires them to leave the country voluntarily or be deported (Art. 143 Reg. OLHM).

c) Disproportionate penalties for foreign nationals (criminalization of immigration).

Despite the fact that the Constitution recognizes the right to migrate and forbids the criminalization of migration (Art. 40 CRE), the OLHM - even though it incorporates these principles formally - takes a punitive approach to immigration. Provisions that establish administrative and economic sanctions, and even deportation, are unjustified and disproportionate.

- One of the most serious aspects is the possibility of a double penalty for being caught with an irregular immigration status; the OLHM "Penalties Scale" establishes the "payment of two basic salaries" for those who have not applied for the relevant visa in the time established". Considering that the basic salary for 2017 is USD375, this means that anyone that does not have a visa must pay a USD750 fine (Art. 170.1 OLHM). The situation worsens given that an irregular immigration status is also reason for deportation (Art. 143.3 OLHM). Therefore, the law establishes that anyone found to be in the country illegally can be fined and deported (Art. 140 Reg. OLHM).

- As part of the administrative penalties, the immigration status can be revoked while the fine must be paid. In order for this to happen, Art. 68.3 establishes reasons that are not very clear, among which is a prohibition for staying outside the country for longer than a certain period of time. Temporary residents may not leave the country for a period longer than 90 days a year (the fine for staying abroad longer is 3 basic salaries – USD1125 per person). For those with permanent residency, the fine is four basic salaries (USD1500 per person) if they leave the country for longer than 180 days each year in the first two years of residency. This restricts the right to mobilize, which is regulated taking a control and punitive approach, making it difficult for foreign nationals living in Ecuador to develop their life project.

- This is a direct reason to be deported (Art. 143.5 OLHM) and the Reg. OLHM has introduced an article establishing that anyone whose visa has been cancelled may not appeal and regularize their immigration status (Art. 15 del Reg. OLHM). This penalty is heavy-handed and does not leave room for any exceptions.

- Special mention should be made regarding the Reg. OLHM that, without respecting the rule of law when establishing fines, imposes additional sanctions to those established in the law on those with an irregular immigration status and prevents them from entering the country, which the law does not contemplate.

- It should be pointed out that the law replaced by the OLHM had already abolished fines for not having a visa or for leaving the country for longer than permitted whereas the OLHM has installed fines for long periods spent abroad, which is a step backwards for exercising the right to migrate.

- Although Art. 51 of the OLHM recognizes the right for migrants, including foreign nationals, to work, Art 68.3 States that a visa may be revoked in the case of "engaging in activities outside those permitted". Once again, this harks back to the previous legislation that led to independent workers, mainly street vendors, being deported for exercising their right to work.

d) Procedures of inadmissibility and deportation do not guarantee due process and may incur regressivity of rights.

Even though human mobility is enshrined in the Constitution, the OLHM establishes procedures to turn migrants away at the border (called "exclusion" in the previous legislation) and for deportation, which places matters of security over the rights of migrants, leaving the visa process open to personal interpretation (discretionary) and not guaranteeing the right to due process. The procedure for deporting someone is of particular concern as certain guarantees that were established in the previous legislation are no longer in place.

- The procedure for declaring a foreign national's application inadmissible establishes reasons that are open to interpretation and foment discretionality; for example, anyone who "may be considered a threat or risk to internal security, according to information available to the Ecuadorian State" (Art. 137.6 OLHM) or "cannot justify their immigration status" (Art. 137.5 OLHM).

- In addition, the guarantees of due process are violated, especially the right to a defence, as seen in the following grounds for inadmissibility: "Failure to produce a valid travel document issued by the competent authority" (Art. 137.4 OLHM) and "Inability to produce a current visa when required by Ecuador migration services or inability to justify immigration status." (Art. 137.5 OLHM). In these cases, it is established that "with no need for administrative procedures, the person shall be turned away immediately, and may return to the country once the reason for inadmissibility has been rectified".

- As regards the procedure for deporting a foreign national, one of the greatest concerns is the regression in the protection of rights and the violation of the guarantees of due process by changing it from a legal procedure to an administrative procedure. The previous Migration Act, which contained several grave due process violations, established that the case must be brought before a magistrate, which may have been seen as criminalizing the contravention but did guarantee that a justice operator independent from those in charge of immigration control decided the case (even though the previous law did not establish the appeal system clearly and contained regulations that clearly contravened the law, it did authorize an administrative body to review judicial decisions).

  The deportation procedure in the OLHM (Art. 141 OLHM) is administrative and under the charge of the Interior Ministry, which enforces immigration control and therefore acts as judge and jury in deportation cases, thereby losing any chance of coming to an independent decision

regarding deportation. In addition, the following failings have been identified that go against due process where deportation is concerned:

- Deportation is the only course of action available in the case of irregular immigration status, except for when the person chooses "voluntary departure", as the OLHM expressly forbids any illegal immigrant from "requesting, renewing or changing their immigration status, condition or visa" (Art. 140 Reg. OLHM). This contravenes international human rights standards that state that deportation should be a last resort. In addition, there is no other option when cases of illegal immigrants are being dealt with other than forced or voluntary departure from the country.

- There is no way of challenging the decision in a court, and the way to appeal an administrative decision is neither satisfactory nor effective, thereby violating international standards.

- There are grounds for expulsion that are highly subjective and leave the decision to the discretion of the immigration authority. More specifically, the reason for deportation given as when "a temporary visitor to Ecuador meddles in internal political matters of Ecuador."

- Grounds are included that restrict the right of non-refoulement and that are not contemplated within the article specifically on the grounds for deportation. Such is the case of Art. 103 of the OLHM, which establishes that should a person request asylum and if it is denied, after appealing the decision "Should the appeal be dismissed, the person should leave the country in a period of no more than 15 days; if this deadline is not met, deportation procedures shall begin." This does not give any room for the person concerned to apply for a different visa but rather forces the person that requested international protection to leave the country.

- The authority that deals with the procedure is not named, which leads to legal uncertainty. Neither the OLHM nor its Regulations establish the authority that addresses the deportation process, which leads to legal uncertainty and contravenes the guarantees of due process contained in Art. 18 of the ICMW.

- Neither the OLHM nor its Regulations clearly establish how immediate deportation should be handled when precautionary measures have been breached; this may result in new arbitrary custodial sentences being handed down to immigrants that violate their rights. (Art. 145 OLHM and Art.141 Reg. OLHM)

Recommendations for the Ecuadorian State:

- The National Assembly should begin a participatory process to reform the OLHM and bring it in line with the Constitution and international human rights instruments, and take into account the contributions made by rights holders and organisations and institutions that work on protecting the rights of migrants in Ecuador. This reform should give priority to the points mentioned above but should not be limited to them.
- The Ministry of Foreign Affairs and Human Mobility should begin a process to reform the OLHM Regulations in all points that violate the rights of migrants.

2. Mass expulsion of Cubans

The following is further information regarding the mass expulsion of Cubans on 6 and 13 July 2016, regarding what was presented by the Ecuadorian State in its official report on the situation, and proof that Art. 22 of the ICMW numbers 1, 2 3 and 4[2] were violated.

- Regarding paragraphs 183 and 184 of the government report, the permission granted by the Municipal Government of the Metropolitan District of Quito was valid and the institution had never requested the police force to intervene. On the contrary, the Secretariat of Social Inclusion of the Municipal Government of the Metropolitan District of Quito was instrumental in the permission being obtained. Therefore, there were no grounds for the operation or the scale of the operation.
- Regarding paragraph 85 of the government report, the conditions and method used by the police operation to evict, detain and then deport the Cubans were not in keeping with a simple immigration check. First, because it took place very early in the morning (03:45 am) and was carried out by around 300 officers from different law enforcement units, including the public order unit and Special Forces, armoured vehicles, dogs and drones that intervened using violence. During the operation, an excessive use of force was registered alongside reports of beatings and insults aimed at the Cubans. Those found at the site of the operation were detained with no court order or legal reasoning to justify the action. When they were detained, the Cubans were not informed of their rights or the reasons why they were being detained.
- The removal of the Cubans was branded as a collective expulsion because from the moment they were detained until they were deported there was no investigation into each person's individual circumstances and the guarantees of due process were violated. Among those detained was someone whose immigration status was in order (Rolando Muñoz Pérez), whose work visa was good through to 14 July 2016 but who was detained and deported nevertheless. There was a two-year-old girl, two boys aged three and ten, and a 12-year-old boy. One of the women detained mentioned being pregnant. This shows that no one stopped to check the immigration status of those being detained or took into consideration the specific characteristics of people that should have been given priority attention. Those detained were forced onto buses and transferred to the basement of the Quito Crime Unit (Unidad de Flagrancias), which does not meet the minimum standards for detention facilities, and even less so for such a large group of people. Men, women and children were crowded into the basement and the following day they were transferred to the "Hotel Carrión", a detention facility for foreigners who are about to be deported.
- From the moment they were detained until around 11:00, the detainees were held by the police with no means of communicating with family, or public or private defence lawyers. At 11:00 am on 6 July 2016, the Ombudsman's Office and some human rights lawyers were granted access, who complained about the overcrowding and other conditions that violated the detainees' integrity and put their health at risk, such as no one, not even the children and adolescents, having received any food after being detained. Toilet facilities were hard to access as they were on a different floor and detainees needed to be accompanied by a guard; the police and immigration agents were rude to the detainees. Food was provided at midday.

2 Due to the limit on the length of this document, it is impossible to go into more detail. However, this fact was noted by different media outlets both national and international. In order to read more about the case and the timeline of events, please go to https://colectivoatopia.wordpress.com/2017/02/23/bitacoraexpulsion/ (in Spanish)

- The detainees did not know what they were being charged with or what would happen. The deportation hearings commenced after midday on 6 July 2016 and continued until Saturday 8 July 2016. The deportation judges presided (as established in the Migration Act in force at the time) and as a result most of the detainees did not come before the court until after the period of 24 hours established as maximum in the Constitution, proving that they were detained arbitrarily.
- Although the deportation hearings were held individually, no information was provided on the order in which the cases would be heard and there was not enough time to prepare a defence; the lawyers only met with their clients minutes before the hearing. Later, due process was seriously violated when around 60 judges' decisions to deny deportation were overturned by administrative resolutions emitted by the Vice Minister of the Interior, Diego Fuentes. In addition, these resolutions did not contain a case-by-case analysis, but rather followed a standard format. And so an administrative body trumped decisions made by judges who based their decision to deny deportation on Resolution No. 006/2016 passed by the Consultative Council on Migratory policy on 12 April 2016, which enabled foreign nationals to regularize their immigrant status until 31 October of the same year, meaning that those still unregistered could not be deported.
- Even though during the hearings some of the detainees voiced their fear of being returned to their country, and some had documents proving that they had requested asylum in Brazil, none of the judges passed the cases on to the Ministry of Foreign Affairs Refugee Bureau to determine whether there was a need for international protection, and neither did they notify UNHCR. Among those deported was one person bearing a certificate from UNHCR indicating that they were a refugee.
- Appeals against the judges' decisions or the arbitrary resolutions of the Interior Ministry were not admitted even though the Migration Act established that no deportation could be enforced until the period for filing the appeal had passed (final determination). Nevertheless, neither the detainees nor the defence lawyers had been formally informed of the decisions when they were coming into force. The detainees were transferred to the airport early in the mornings of Saturday 9 July and Monday 11 July, and at noon on Wednesday 13 July 2016, before the period to appeal the decisions had run out. There is an audio-visual recording of the unjustified and excessive use of violence during the transfers.
- The same day of the detentions, a habeas corpus appeal was filed by the human rights activists but despite a judicial guarantee that the appeal should be heard quickly, the hearing, which took 12 hours, was finally held on Tuesday 12 July (6 days after the detention), when most of those detained had already been deported. Even though there was a judicial guarantee to come to a decision, the Interior Ministry had already deported the first two groups. Finally, the Criminal Guarantees Tribunal decided to deny the habeas corpus, apart from for one person and it is not clear why this one case was an exception. The Tribunal stated that it would not analyse the legality of the detention, even though that was precisely what it was supposed to do. This decision was appealed, which took six months because of conflicting competencies among the different courts. Finally, the Provincial Court of Pichincha rejected the appeal on 16 February 2017, six months after the last group had been deported.[3]

3 All of the documentation pertaining to this case can be found in Habeas Corpus Case No. 17250201600100 which was brought before the Criminal Guarantees Tribunal of Quito. The sentence was passed on 12 July 2016.

Recommendations for the Ecuadorian State:

- The Public Prosecutor's Office, Comptroller's Office and the Judicial Council should start investigations to determine administrative and criminal responsibilities of the police, administrative and judicial authorities involved in the collective expulsion of the Cubans.
- The Ombudsman's Office should issue and make public a report on their own investigation into the rights of the Cubans deported.
- The Interior Ministry and the Ministry of Foreign Affairs, as restitution, should eliminate the penalty of deportation and prevention of the people who have been expelled returning, and make it possible for immigrants to regularize their immigration status, especially those with partners and children, and whose life project was stymied by their rights being violated.
- An intensive training scheme on immigrant rights should be put in place for judges, police officers and administrative staff at the Interior Ministry and the Ministry of Foreign Affairs and Human Mobility.
- The National Assembly should start the legal reform of the deportation procedures as soon as possible so that they comply with guarantees of due process in line with the Constitution and international human rights instruments.

3. The arrest and detention of Manuela Picq

One year prior to the mass deportation of the Cubans, another incident took place that caught the public's attention and showed the arbitrary nature of immigration policy and the violation of rights of a foreign national. This was the case of Manuela Lavinas Picq, a French-Brazilian journalist and university lecturer who had supported Ecuadorian indigenous movements' causes for several years. On 13 August 2015, while at a march organized by different social movements, Manuela was arbitrarily and illegally arrested under confusing circumstances, along with her partner Carlos Pérez, president of the indigenous organization "Ecuarunari". Pérez was freed after a few hours but Manuela Picq remained in detention. At first, she was taken to a public hospital with a police escort and deprived of her right to move freely. Then, a few hours later, she was informed that the Ministry of Foreign Affairs and Human Mobility had cancelled her visa, with no due process denying her the right to a defence and with no notification of the decision at that time. The State alleged that they could exercise their discretion to cancel the visa, and therefore no procedure was necessary.

After being detained for four days at the Hotel Carrión, on 17 August 2015 Manuela was informed that the process to have her deported had begun. A hearing was held where the judge ruled that there were no grounds for deportation and ordered that she be set free. However, the Interior Ministry, in direct contravention of the Migration Act, requested that the decision be referred. Facing the threat of being detained once again and then deported, Manuela Picq decided to leave the country of her own free will. And so on 21 August 2015 she left Ecuador because of a lack of guarantees and travelled to Brazil to apply for the Mercosur visa, which was denied.

It should be pointed out that on 20 August 2015, judge Paola Ayala, from the Judicial Unit specialising in family rejected the petition for her to appeal on constitutional grounds[4], which sought to overturn the revoking of her visa citing no due process. Manuela Picq has not been able to return to Ecuador even though her partner is Ecuadorian and she is a lecturer at a university in the country.[5]

[4] Appeal on constitutional grounds No. 7203201512020 - Judicial Unit specialising in family.
[5] This case was also widely covered by the national and international press.

Recommendations for the Ecuadorian State:

- The Public Prosecutor's Office should start investigations to determine administrative and criminal responsibilities of the police and administrative authorities involved in the detention of Manuela Picq.
- The Ministry of Foreign Affairs, as restitution, should reinstate Manuela Picq's visa given the fact that her life project has been upset by the violation of her rights.
- An intensive training scheme on immigrant rights should be put in place for judges, police officers and administrative staff at the Interior Ministry and the Ministry of Foreign Affairs and Human Mobility.
- The National Assembly should start the legal reform of the deportation procedures as soon as possible so that they comply with guarantees of due process in line with the Constitution and international human rights instruments.

4. The situation of the Venezuelans living in Ecuador

In the last few years there has been a visible increase in Venezuelans immigrating to different countries in South America, especially Colombia, Ecuador and Peru because of the difficult situation in Venezuela. The number of Venezuelans in Ecuador has risen rapidly in 2016 and up until now in 2017. Unfortunately, the Ecuadorian State has not generated any official updated statistics on the number of Venezuelans in the country but at the end of July 2017, staff from the Interior Ministry reported to the press that in the town of Rumichaca on the border of Ecuador with Colombia, where there was usually 1500 people registered crossing the border (from either side to the other) the number has risen to 2700, of which 1800 are entries (to Ecuador), 8 of every 10 of whom are Venezuelan. This is such a significant increase that the government has had to install more immigration agents in this border town.[6] The following can be stated about the Venezuelans living in Ecuador:

- Despite the crisis in Venezuela and the fact that people are fleeing from a humanitarian crisis, the Ecuadorian State, given its international policy, has not rolled out the humanitarian visa provided for in the OLHM and has not given the Venezuelans requesting international protection the means to apply for such a status. Therefore, the Venezuelans in the country are registered as "tourists" or "immigrants", neither of which refers to the real reasons they left their country.
- Although the OLHM makes it possible to grant member countries of UNASUR, like Venezuela, a stay of 180 days, it has been reported that this is at the discretion of the border officials. Cases of Venezuelans being given 10 to 20 days and then asked to prove incomes that are impossible for people coming into the country under these conditions are not unheard of. This leads to them finding themselves without a visa leaving them vulnerable to having their rights violated.
- Venezuelans face serious problems getting visas and documentation as the Venezuelan consulate in Quito can take up to six months to deliver a passport or process an apostilled criminal background check certificate. Therefore, even when people fulfil the requirements and pay the fees for a visa in Ecuador, they may be illegal because they have to wait so long for these documents. Given this situation, the Ministry of Foreign Affairs and Human Mobility has not adopted any specific measures even when it is obvious that the immigrants are not at fault.

6 Digital magazine Plan V, "Venezolanos el escape del infierno", 30 July 2017. http://www.planv.com.ec/historias/sociedad/venezolanos-el-escape-del-infierno (in Spanish).

- There is an increasing number of reports of people that are very ill as a result of diseases not properly treated in their native country, or cases of malnutrition, which makes them especially vulnerable.[7]
- The number of Venezuelans living in different cities in Ecuador is on the rise along with increasing levels of xenophobia and discrimination from the locals. There are more cases of forced labour where Venezuelans work, usually in shops, restaurants, bars and in other places providing customer services. Tensions run high between local and Venezuelan street traders.
- The human mobility authority has not put in place any actions to eradicate xenophobia and discrimination, and promote the integration of the Venezuelans living in Ecuador.

Recommendations for the Ecuadorian State:

- The Interior Ministry should generate official data on the Venezuelan population in Ecuador (entry, exit, net migration).
- The Ministry of Foreign Affairs and Human Mobility should make it easier for Venezuelans to apply for a visa given the difficulties detailed above, and authorize the humanitarian visa (at no cost) for those that cannot apply for other types of visas, recognizing that the humanitarian crisis is the reason behind why the Venezuelans are migrating to Ecuador.
- Take affirmative action to eradicate discrimination and xenophobia and reduce tensions between the locals and the immigrants. Likewise, adopt actions to avoid and penalise forced labour and other types of exploitation that the Venezuelans fall victim to.

5. Inadmissibility at the border

Another point to be taken into account is inadmissibility at the border, mainly in international airports. This is important as the grounds for inadmissibility on Ecuadorian territory are not clear. The numbers of people not being allowed into the country may rise given that immigration officials do not consider that a foreigner has entered Ecuador until their passport has been stamped. This attitude has left some people in legal limbo with immigration officials passing responsibility for them on to the private companies that administer the international airports in Quito and Guayaquil, and the private airlines.

This issue has led to some serious cases where immigrants have been locked up in rooms for those denied entry for periods of more than 10 days[8], and where public or private institutions that protect rights cannot gain access to. Entry may be denied more frequently to people from Cuba and Haiti, from African countries and more recently some cases of Venezuelans have been reported but not as frequently. This practice has led to dramatic situations, such as the Cuban who slit their wrists in the airport at Guayaquil to avoid returning to their country.[9]

Recommendation for the Ecuadorian State:

- Set up a procedure befitting a duty bearer that does not involve detaining people in airports, and protocols that ensure that people's rights are respected as provided for in Ecuadorian legislation.

[7] Reference: Human Mobility Office in the Province of Pichincha.
[8] Different cases reported in the newspaper "El Comercio": http://www.elcomercio.com/actualidad/seguridad/cubanos-no-admitidos-viven-aeropuerto.html; http://www.elcomercio.com/actualidad/seguridad/excluidos-pasan-noches-aeropuerto.html The Home Office: http://www.ministeriointerior.gob.ec/26-cubanos-fueron-devueltos-a-su-pais-por-incumplir-politica-migratoria-de-ecuador/
[9] http://www.larepublica.ec/blog/sociedad/2014/04/10/cubano-corto-venas-lleva-dos-dias-aeropuerto-guayaquil/
(All articles in Spanish)

6. Detention of immigrants (Hotel Carrión)

Since 2013, the Ecuadorian State ran the Hotel Carrión Temporary Shelter in Quito, which was actually a private hotel converted into a detention centre for immigrants with irregular status waiting to be deported. This centre was guarded by police and came under the remit of the Interior Ministry. Access was restricted – human rights NGOs were not allowed in and on numerous occasions lawyers were arbitrarily forbidden to visit the immigrants they were defending (for example, in the case of the mass deportation of Cubans). Detainees could be held indefinitely until the Interior Ministry found the resources to pay for the deportation, with some people detained up to four months in the Hotel Carrión.

Although this facility was closed down in February 2017, those who were arbitrarily detained there have never received reparations or compensation as detailed in the ICMW. It should be pointed out that the OLHM does not clearly state how to proceed with detention for cases of "immediate deportation".

Recommendations for the Ecuadorian State:

- Establish guarantees that detention centres similar to the "Hotel Carrión" will never be set up again or other methods used to deprive migrants of their freedom.
- Determine ways of making reparations for migrants who were detained arbitrarily in this centre.

7. Crimes linked to human mobility

The OLHM has introduced a specific chapter on crimes in the context of human mobility from the standpoint of prevention that complement the Comprehensive Organic Criminal's contents on investigation and penalization. Nevertheless, the following points should be taken into consideration:

a. Human trafficking

- According to recent studies, not enough actions are done to prevent this crime and the underlying structural causes of this problem persist - male chauvinism, adultcentrism, racial discrimination and barriers to accessing work and education.[10]
- These same studies show that people are trafficked in their own country and across borders for different purposes with sexual exploitation, forced labour and forced criminal activities among the main ones. The age of the victims seems to be falling with cases seen of children as young as 12 being trafficked for sexual exploitation, and adolescent recruiters who usually contact their victims through social media networks.
- Public policy on human trafficking has not been reviewed and updated since 2006.
- The OLHM does not consider ways of regularizing immigration status for victims of trafficking; this perpetuates problems trafficking victims face as even when they are placed in the Victims and Witnesses Protection System, they still do not have a regular migration status.
- The OLHM does not establish a special protection system for trafficking victims; they are passed into the Victims and Witnesses Protection System meaning that they become part of the criminal justice system, which contradicts the specific measures to protect the rights of victims of trafficking.

[10] Catholic Relief Services, "Making the invisible visible - a qualitative analysis of trafficking on the Ecuador–Peru and Ecuador-Colombia borders", (Quito: 2016) digital document.
FLACSO Ecuador, "Entre el enfoque de derechos humanos y las lógicas de seguridad and control: Análisis de las políticas públicas y el tráfico de migrantes en Ecuador", (Quito: 2016), digital document. (in Spanish)

- There are not enough shelters for victims – there are only two (in Quito and Machala); the shelter in Quito is run by an NGO and receives less and less funding as time goes on. Both centres take in adolescent victims of sex trafficking and there are no centres for victims of trafficking for other purposes or for victims of different ages.
- The number of cases that are prosecuted is very low – even when judges, prosecutors and government authorities know about circumstances and situations that might imply human trafficking, they are not reported either because of fear or because certain forms of trafficking have become seen as "normal".
- The protocols for assisting victims of trafficking have not been made official or institutionalized which means that the state and non-state government institutions do not coordinate as much as they should.
- The efforts, all be they insufficient, are focused on investigating and punishing the crime more than on preventing the crime and restoring the rights of the victims. Of the cases prosecuted, many do not result in a conviction.

Recommendations for the Ecuadorian State:

- Adopt measures that eradicate the structural causes of human trafficking, especially male chauvinism, adultcentrism, racial discrimination and barriers to accessing work and education.
- Reform the OLHM to guarantee ways to regularize immigrations status and provide special protection of the rights of victims of trafficking.
- Generate a special protection system for victims of trafficking unrelated to the Victims and Witnesses Protection System.
- Hold training courses on human trafficking for police officers legal and administrative authorities. Likewise, generate ways of gathering information on the issue and disseminating to groups of people that are in danger of falling victim to trafficking.
- Generate a specific public policy instrument on trafficking that is in line with international human rights standards.

b. Smuggling of migrants

- Smuggling of migrants undermines the integrity of both local populations, whose members put themselves at risk to enter another country, mainly the United States, and of people of other nationalities looking to immigrate to other countries. Ecuador is often seen as a transit country. The networks that smuggle Ecuadorians are usually the same as the ones smuggling foreign nationals into Ecuador – mainly from Cuba, Haiti, African countries such as Nigeria and Cameroon, and others.
- As with trafficking, the State focusses on investigating and punishing the crime with little funding and attention allocated to prevention or assisting the victims. Tightening immigration controls is justified as a way of preventing the smuggling of migrants; however, it usually results in more rights violations and criminalization of the possible victims.
- Public policy on the smuggling of migrants has not been reviewed and updated since 2006. In fact, the plan that was developed then focusses mainly on people trafficking rather than migrant smuggling.
- Although the OLHM has established some provisions for preventing migrant smuggling, they are very ambiguous.
- There are no temporary shelters for international victims of migrant smuggling.

Recommendations for the Ecuadorian State:

- Generate a specific public policy instrument on migrant smuggling that is in line with international human rights standards.
- Adopt measures to prevent migrant smuggling that do not include tightening immigration control and that do not criminalize migrants or possible victims.

8. Access to other rights

Here follows an overview of some of the limitations to foreign nationals exercising their rights that should be taken into consideration by the ICMW:

Right to education:

- Children and adolescents of different nationalities are still discriminated against in schools by authorities, teachers and parents who do not understand why these students are in the classroom. The discrimination is worse for Colombian refugees on the northern border and in Quito; and is more complicated for Syrian refugees who want to integrate but find it difficult because of the language barrier and cultural differences.[11]
- There are many cases of adolescents who as refugees manage to finish secondary school but are not given their leaving certificate. The authorities insist on the adolescents giving up their refugee status and applying for a different type of visa. These cases are mainly found in the provinces on the border with Colombia.[12]
- Cubans face difficulties registering their degrees (professional titles) in Ecuador as once they are registered they can then apply for a professional visa. This is just one more way Cubans wanting to regularize their immigration status are blocked.

Right to health:

- Foreign nationals, especially refugees, find it difficult to access mental health services as they do not qualify for treatment. This means that immigrants and refugees cannot access psychological or psychiatric support.[13]

Right to work and social security:

- As regards the right to work, immigrants and refugees in Ecuador find themselves working in very precarious situations, both those working for someone and those working independently, mainly as informal sellers. For the former, they often do not sign contracts and so are not affiliated to the social security system and are not paid as they should be. [14]
- There are some situations that need to be looked into, such as Colombians being exploited in the palm fields in the Province of Esmeraldas (on the border with Colombia) and Colombian refugees and Peruvian immigrants working in the mines in the south of Ecuador in Yantzaza (Province of Zamora Chinchipe).

[11] Reference: Misión Scalabriniana Support Team and the Human Mobility Office in the Province of Pichincha.
[12] Misión Scalabriniana Youth workshop on human mobility, Ibarra, November 2016.
[13] Pichincha Local Government, "Estudio sobre el Derecho a la Salud Mental de las Personas en Movilidad Humana: Una aproximación al ejercicio y garantía de este derecho en la Provincia de Pichincha" (Quito: 2016), digital document (in Spanish).
[14] ACNUR, Derecho al Trabajo de las Personas Refugiadas en el Ecuador, (Quito: 2014). http://www.acnur.org/t3/fileadmin/Documentos/RefugiadosAmericas/Ecuador/2014/9963.pdf (in Spanish)

- Regarding social security, those refugees or immigrants that have not obtained an identification document are assigned a "fictitious number" by the Ecuadorian Institute of Social Security (IESS) as foreign nationals do not have the same number of digits on their identification or refugee card. This leads to serious problems as the services they have a right to are limited.

Right to housing:

- Because of the rising number of Colombians and Venezuelans entering the country in the last few years, there are many adverts for rooms for rent that stipulate that they do not accept people of these nationalities or others. Often no tenancy contract is signed which leaves immigrants and refugees more open to having their rights violated. There is no information available on housing programmes that include refugees or immigrants.[15]

Recommendations for the Ecuadorian State:

- Adopt regulatory measures, public policy and other measures to eradicate discrimination and xenophobia, and fulfil migrants' rights to education, health, work and housing.
- Eliminate the administrative or regulatory barriers that impede the exercise of these rights.

[15] The Norwegian Refugee Council, "Acceso a vivienda y tierra para mujeres en necesidad de protección internacional en Ecuador", (Quito: 2013) http://reliefweb.int/report/ecuador/acceso-tierravivienda-para-mujeres-en-necesidad-de-protecci%C3%B3n-internacional-pnpi-y **(in Spanish)**