

COALICIÓN INTERINSTITUCIONAL PARA EL SEGUIMIENTO Y DIFUSIÓN DE LA CONVENCIÓN INTERNACIONAL PARA LA PROTECCIÓN DE LOS DERECHOS DE TODOS LOS TRABAJADORES MIGRATORIOS Y SUS FAMILIARES



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**SHADOW REPORT ON THE APPLICATION BY THE ECUADORIAN STATE OF THE INTERNATIONAL CONVENTION OF THE PROTECTION OF THE RIGHTS OF MIGRANT WORKERS AND THEIR FAMILIES. ANALYSIS OF TOPICS RELATED TO THE MAIN ARTICLES OF THE CONVENTION AND QUESTIONS BY THE COMMITTEE.
(FINAL REPORT)**

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INTRODUCTION

The Interinstitutional Alliance for Monitoring and Dissemination of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in Ecuador, (CTMF), presents this Second Alternative Report to the Committee for the Protection of the Rights of All Migrant Workers and Members of their Families, as a contribution to the evaluation process regarding the compliance of the Ecuadorian State with the aforementioned Convention.

The Alliance is a collective space that joins church and academic organizations, civil society, and labor unions that operate in Ecuador in an effort to promote the continuing spread of the goals of CTMF, along with other instruments for protecting human rights. The Alliance promotes social, political, and judicial actions that enhance legal protections, realize guarantees made to migratory workers, and change the design of public policy in support of human rights for all migrant workers.

With this understanding, The Alliance began working on this alternative report on compliance two years after entering a relationship with the International NGO Platform in Geneva through December 18, an organization which offered the first support and guidance for the generation of this report. Once the Ecuadorian state presented its compliance report, the Alliance designated a Technical Secretary who created an initial report regarding “General and Administrative Questions” which was then presented to the Committee of Migrant Workers in April of 2007, as a tool with which to analyze the Ecuadorian State’s preliminary report.

This report serves as a complement to the first report. It also presents the situation of migrant workers from the perspectives of both Emigration and Immigration, and includes the recorded travel experiences of each respective group. The report likewise locates the principal situations of vulnerability in which the migrant worker population finds itself, and analyzes them in light of certain articles of the Convention (4,5, 7,8, 9,10, 14, 16,17, 18, 22,23, 25,26, 27, 28, 29, 30, 31, 33, 40, 41,43, 45, 47, 52,54,56, 65, 66, 69, 70, 83), articulating these situations with some of the questions the Committee has formulated for the Ecuadorian State (1, 3, 5, 6a, 10, 11, 12, 13, 15, 16, 17,18, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30).

The report has been constructed on a systematic basis involving the main theoretical reflections and investigations that Ecuador has produced on the theme, through formally requested and obtained statistical information, and the compilation of case testimony that the Alliance has acquired from organizations operating in Ecuador that work in the field. This allowed us to use a participatory process that involved the entire nation, and at the same time kept the report firmly rooted in objectivity.

The experience the Alliance has garnered from the production of this report has allowed it to establish a framework in which to assess the conditions of migrant workers in the country, taking note of the advances that have been made, and, above all, the great challenges that must still be met in order for there to be an effective realization of human rights in the migrant worker population.

Some of the primary concerns in this report have been: the absence of effective policies that would permit the gathering of solid migratory statistics in the country, the weaknesses the Ecuadorian Judicial System has encountered in adapting to international standards of protection, the need of a coherent public policy that adjusts to those same standards and implements them equally with respect to emigration and immigration, the persistence of restrictive conceptions of security, selectivity, and sovereignty among those that oversee immigration, The absence of effective mechanisms of consular protection with respect to emigration, and the weakness of the Ecuadorian state with regard to the design and implementation of policies that would reduce discrimination and promote citizen awareness of the rights of migrant workers.

In this moment in time, Ecuador is in the midst of a drive for constitutional and state reform. Meanwhile, the subject of migration finds itself weakly positioned in the context of these large projects. We believe this report can open opportunities for the international community, the state, and civil society to work together for its effective integration, and establish a base that will guarantee its effective practical application.

ABBREVIATIONS

(In Spanish)

ACNUR	Alto Comisionado de Naciones Unidas para los Refugiados
CAN	Comunidad Andina de Naciones
CARDEV	Comité de Ayuda a Refugiados y Desplazados por la Violencia
CIPESM	Comunidad de Inmigrantes Peruanos Señor de los Milagros
CLADEM	Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer
CTMF	Convención Internacional sobre la Protección de los Derechos de todos los Trabajadores Migratorios y de sus Familiares.
CRS	Catholic Relief Services
CEDAW	Convención para la eliminación de todas las formas de discriminación a la mujer
DNM	Dirección Nacional de Migración
DYA	Desarrollo y Autogestión
INEC	Instituto Nacional de Estadísticas y Censos
INREDH	Fundación Regional de Asesoría en Derechos Humanos
ISP	Internacional de Servicios Públicos
FLACSO - Ecuador	Facultad Latinoamericana de Ciencias Sociales – Ecuador
PADH-UASB	Programa Andino de Derechos Humanos de la Universidad Andina Simón Bolívar
PMCD	Plan Migración, Comunicación y Desarrollo
OIM	Organización Internacional para las Migraciones
OIT	Organización Internacional del Trabajo
SJRM - Ecuador	Servicio Jesuita a Refugiados y Migrantes - Ecuador

1 Emigration

1.1 *Description of Emigration Flow. (Question 3)*

The process of emigration from Ecuador has passed through various stages, each with specific characteristics in regards to primary places of origin, age, sex, economic situation, and destinations of emigrant populations.

Gioconda Herrera points out that United States Census records first note Ecuadorian residents in the country beginning in the 1930s, and that even stronger emigratory flows to Venezuela, the United States, and Canada have been experienced since the 1960s¹.

Emigration during the fifties and sixties was basically composed of upper class males from southern Ecuador who, due to the crisis in "paja toquilla" production (used to make Panama Hats), emigrated to the United States, Canada, and Venezuela. The majority of those emigrants did not return, but created expatriate networks that led to greater emigration flows. During the same period, the Kichwa Otavalo population began migrating to the United States and certain European countries, though their emigration was of a temporary commercial character having to do with the sale of handcrafts.

The records from the National Migration Office of the National Police make it possible to calculate the number of persons who have emigrated by taking the difference between the number of persons who have entered the country and the number who have left the country. The graph presents migration numbers from 1976 through 2004. Between 1976 and 1990, the number of migrants held relatively steady at around 20,000 persons per year. After 1993, we begin to see a rise in emigration that, by 1998, had reached 40,735 persons annually².

Emigration during the period between 1980-1998, was principally comprised of persons from the countryside, rural artisans, and males from Azuay and Cañar migrating to the United States. The majority of men became temporary laborers or acquired jobs in the service industry, while the women found work in the garment industry, at restaurants, and as domestic servants. The Kichwa Otavalo population continued its migratory pattern characterized by temporary emigration for purposes of artisan commerce. This period also saw the hardening of U.S. immigration policy.

At the beginning of the 1990s, emigration from Loja to Spain began as a consequence of the military conflict with Peru³. This migration created the first real migratory network to Europe.

¹ Herrera, Gioconda Ecuador: Statistics from Migration International, UNFPA-FLACSO – ECUADOR, 2006.

² Herrera, Ob cit, 2006.

³ Abott, 2000, Gómez 1998 and Vidal & Moreno, 2000, in Cartilla Migratoria No. 6, The migratory process in the province of Loja, Plan Migración, Comunicación y Desarrollo, España-Ecuador, June 2004, p. 3 and 6.

Between 1996 and 1997, the indigenous Saraguros from Loja immigrated to cities such as Vera, Spain, setting up family links crucial for later immigrants. In smaller measure, this group also emigrated to Italy, the United States, and Australia.⁴

Emigration at the end of the 1990s, as the state report notes, "was fueled by the economic crisis of 1999." It was principally composed of those from urban areas, especially Quito, Guayaquil, and Cuenca, according to data from the INEC, home surveys EMEDUR-EMEDINHO 2000, it was estimated that 61% were from the Sierra, 32% from the Coast and 6% from the East and the Galapagos.⁵ Emigrants consisted principally of young, mestizo women who came from varied social classes and had an above average educational background.

The principal destination until 1997 was the United States, 63%. The 2001 Census indicates that 49% migrated to Spain, 27% to the United States, and 10% to Italy. During the period from 1997 to 2002, 196,692 Ecuadorians have settled in countries in the Americas.

The National Office of Migration, affirms that 504,203 Ecuadorians, more than 10% of the economically active population, EAP, left the country between 1999 y 2000, the majority of which went to Spain or the United States.⁶ According to the Latin American Institute for Social Research, ILDIS, an estimated one million Ecuadorians live in the United States and Spain on top of the Ecuadorian communities that live in Italy and other countries in Europe and South America.

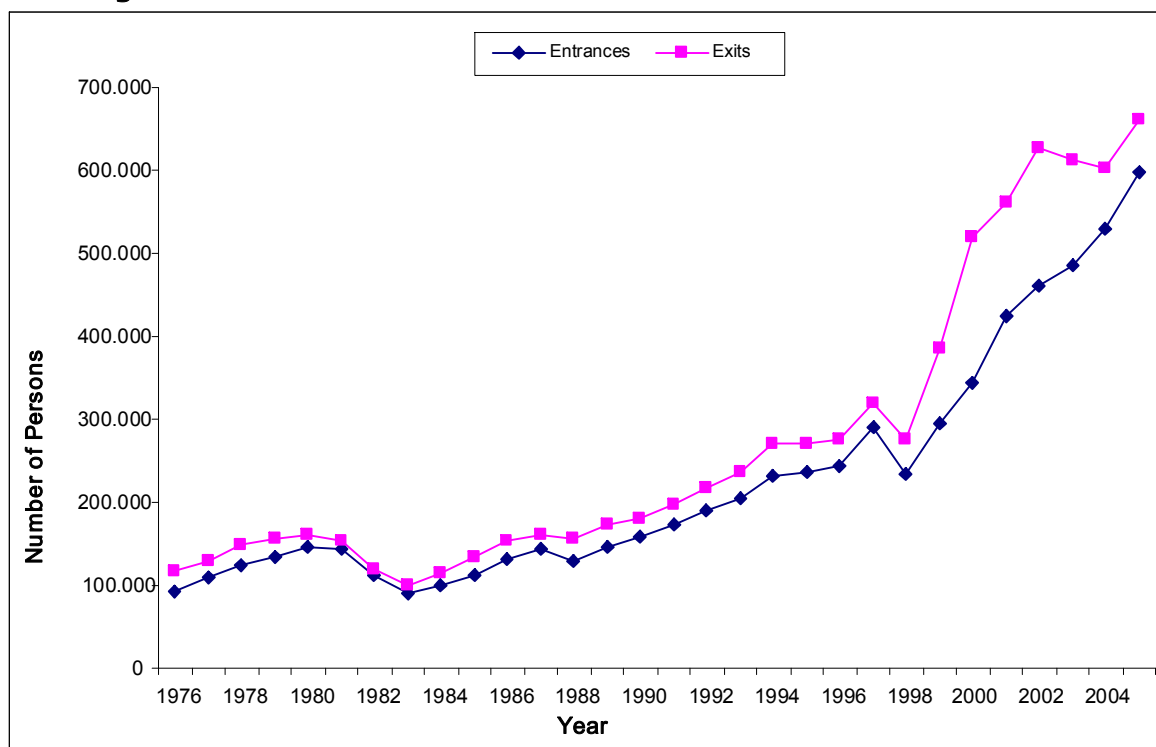
The dizzying rise of persons emigrating from Ecuador begins to register at the start of 1999. The graphic clearly shows that the breach between exits and entries widens from 1999 to 2003, later returning to its former congruence in 2004. In the last 7 years, the net migration rate has reached 827,473 which means that at least 7% of the population, or 20% of the EAP (economically active population) which, according to the 2001 Census was composed of 4,445,000 persons (Camacho, 2005) has left the country.

⁴ Cartilla Migratoria No. 17, Immigration of indigenous Saraguros to Vera (Spain), Plan Migración, Comunicación y Desarrollo, España-Ecuador, June 2006, p.4.

⁵ Cartilla Migratoria No. 18, Effects of Ecuadorian emigration and the middle-distant future of remittances, Plan Migración, Comunicación y Desarrollo, España-Ecuador, June 2006, p.3

⁶ Cartilla Migratoria No. 1, Emigrant remittances and their effects on the Ecuadorian economy, Plan Migración, Comunicación y Desarrollo, España-Ecuador, May 2002, p. 3

Figure No. 2 Entrance and Exit of Ecuadorians from 1976 to 2005.



The net number of emigrants in the last seven years reaches 827,473 persons, the equivalent of 20% of the EAP. Gioconda Herrera points out that emigration peaked in the year 2000 with the exit of 175,000 persons who left and did not return. While a noted decrease was observed in 2004, one year after the imposition of a visa requirement for travel to Spain and member countries of the Schengen Treaty, migratory flow in 2005 and the first half of 2006 was triple that of previous decades.

These records do not take into account those who leave the country through irregular channels. Various studies have demonstrated that maritime shipping routes are becoming an ever more frequent channel for emigration to the United States (Jokisch and Kyle, 2005). This information is constantly corroborated by more and more frequent news of the interception of boats full of Ecuadorian immigrants bound for Central America.

The INEC and the National Office of Migration have established that around 1,500,000 Ecuadorian emigrants exist, and of those, about 60% are living in situations where they are considered undocumented.⁷

⁷ Cartilla Migratoria No. 11, Migration, Migrants and participation, Plan Migración, Comunicación y Desarrollo, España-Ecuador, November 2005, p. 2.SIISE 3.5 taken from V Censo de Población y Vivienda (2001) and Annual Statistics from the Dirección Nacional de Migración de la Policía Nacional del Ecuador.

Approximately one million emigrants have left the country in the last decade⁸. They are added to the more than two million emigrants who left Ecuador between 1970 and 1998. So it is estimated that around three million Ecuadorians live outside of the country, that is to say, 25% of the general population and 15% of the EAP⁹.

As far as the breakdown of emigration, according to INEC statistics¹⁰, men migrate more than women, 53% versus 47% of the total number of emigrants during the period between 1996 and 2001. But female migration is higher in Guayaquil, 55.9% women, versus 44.1% men. The man/woman proportion in Quito is almost the same (48.7% women and 51.3% men) and migration in Cuenca is markedly male (67% versus 33%).

With respect to intra-regional emigration to places like Chile and Venezuela, women outnumber men, while male emigrants to Colombia and the United States outnumber women 2 to 1. In the case of Europe, there are more women than men in Italy, Switzerland, and Belgium. The sexes are equally balanced in England and Spain.

In 2005, 663,601 Ecuadorians left the country, compared with 519,974 in the year 2000, an increase of 27.6%¹¹

Of the total number of emigrants in 2005, 320,032 were men and 343,569 were women. According to age group, 445,793 emigrants, or 67.17%, were between 25 and 59 years old; that is to say they were among the economically active population.

1.1.1 Possible new wave of emigration

We cannot leave out a warning that Ecuadorians in desperate economic situations might become future "victims of transnational operations involving the trafficking of slaves to Europe, the United States, or possibly Asia."¹²

As Guerrera points out, "The socioeconomic crisis that unleashed a massive wave of migration still hasn't been satisfactorily resolved; Economic stability rests on the precarious foundations: high petroleum prices, remittances, and money laundered from drug trafficking. Political instability persists, as do the stagnation of the productive sector and the lack of a state response to confront the crisis"¹³.

Social and economic indicators from 2006 are discouraging: Poverty level 38.5%, level of indigence 9.9%, concentration of 55.3% of national wealth in the hands of 20% of the population, average household income of USD 453.26 versus a minimum vital salary of USD 170.00, unemployment rate of 9.9% (March), and an underemployment rate of 62.5% (March).¹⁴

⁸ According to the Dirección Nacional de Migración between 2000 and 2006 a negative net number of 735,810 Ecuadorians was registered (balance between exits and entries to Ecuador).

⁹ SJRM - Ecuador, The Vote from abroad, press release, May -2006.

¹⁰ According to the Censo de Población y Vivienda of 2001.

¹¹ INEC, Anuario de Migración Internacional, year 2005.

¹² Brad Jokisch and David Kyle, Transformation of Ecuadorian transnational migration, 1993-2003, in Herrera Gioconda, Ecuadorian migration, transnationalism, networks and identities, FLACSO, 2006 p. 60.

¹³ Guerrera Marco, Migration, Leadership, and development, Centro Canadiense de Estudios y de Cooperación Internacional CECI, Centro Andino para la Formación de Líderes Sociales, CAFOLIS, Plan Migración, Comunicación y Desarrollo, Red Migración de Loja, Imprefepp, Quito, 2006, p. 212.

¹⁴ Statistics from INEC – www.inec.gov.ec

Additionally, warns Luciano Martínez, "If rural employment doesn't improve, not only in the agricultural sector, but the handcraft industry, commercial sector, service industry, and rural tourism, there will be no possibility of containing the flow of emigrants from Ecuador".¹⁵

1.1.2 Causes of emigration

Ecuadorian emigration is conditioned by the social, cultural, political, and economic realities of the country. It also has a serious effect on the processes of regional and world economics, politics, society, and culture which have a bearing on policies of control and regulation.

Emigration from Ecuador is also a part of the process of globalization. The mobility of workers forms part of a strategy in the distribution of the marketplace and profit making. This strategy, when accompanied by policies of restriction and regulation of migratory flow, negatively affects the personal dignity of migrants and can lead to violations of their human rights.

In order to guarantee the construction and consolidation of the current mode of production and encourage privatization and foreign investment at global level, developed countries designed neoliberal policies to be implemented in the world's poorest countries. In the case of Ecuador, successive states since the return of democracy in 1978 implemented those policies, much to the detriment of national policy which guaranteed observance of social, cultural, and economic rights, and also at the expense of social spending, all of which caused unemployment and the progressive pauperization of the population.

Ecuador's relationship with destination countries is unequal. Destination countries only take into consideration their desire for manual labor at the expense of social, economic, and cultural needs of migrant workers and their families, paying little attention to the consequences of emigration on the Ecuadorian community.

We can affirm then, that the emigration process of the Ecuadorian population is, in reality, the result of the application of a new division of labor at a global level which generates the conditions that place the decision of whether or not to migrate in the of persons, usually those who have a reasonable level of economic solvency¹⁶.

Claudia Pedone states that "the structurally poor cannot count on international migration as a strategy to escape the crisis. The few that are able, must gather resources from the entire family, or enter into deals with loan sharks."¹⁷

¹⁵ Luciano Martínez Valle, *International migration and the rural labor market in Ecuador*, in Herrera, *Ecuadorian migration, transnationalism, networks and identities*, p. 163.

¹⁶ 2001 Census, and taking the poverty measurement as basic needs unmet, we find that 60% of the emigrant population belongs to a sector not considered to be poor, 13 % are in extreme poverty, 27 % are poor.

¹⁷ Pedone Claudia, *You Always Take Them with You. Cadenas y redes migratorias*, in Herrera Gioconda, *Ecuadorian migration, transnationalism, networks and identities*, FLACSO, 2006 p. 118.

More immediate causes for emigration can also be pointed to; the conflict with Peru, the losses caused by the "El Niño" phenomenon, financial crisis provoked by the freezing of deposits and the bank bailout of 1999 which deteriorated the productive apparatus and labor market of the country, and consequently lowered the quality of life of the majority of the population.

Among the political causes we previously discussed is the deterioration of the institutional stability which has, since 1997, seen the ouster of four presidents (1998, 2000, and 2005) and the dismissal of the Supreme Court, the Judicial Council, the Constitutional Court, and the Supreme Electoral Court (2004-2005).

Female emigration is caused, in addition to economic factors, by the existence of a childcare market in developed countries, above all, in Europe, as well as the need to guarantee social reproduction and "inequality in gender relations"¹⁸

In global terms, the feminization of work is a growing phenomenon, and serves as an engine for the feminization of migration in precarious conditions. This migration has complex, multiple causes with the development of diverse forms of communication and construction of subjectivities in terms of the kind of lives people desire¹⁹.

1.1.3 Characteristics of emigrant flows

The majority of the emigrant population is young and very capable. 41% are between 21 and 30 years old, and 22% are between 31 and 40.

The education levels of Ecuadorian emigrants are generally high. In the United States in 2000, 20.38% had finished high school, 24.10% had bachelor degrees, and 1.92% had done post-graduate work.²⁰

According to FOMIN statistics, most Ecuadorian emigrants in Spain had a medium education level, 8.7% had completed some collage, 20.3% had not finished their university studies, 25.6% had only finished high school, and the rest had finished college. No one illiterate was found.²¹

Emigration is most common in several provinces. According to the 2001 Census, 50% had come from the provinces of Pichincha and Guayas, while 21% came from Azuay, Cañar, and Loja.

Ecuadorian emigrants have other destinations in addition to the United States. Migration to Europe, especially Spain and Italy, has become common. While Chile and Argentina have become destination countries for migrants, Guatemala, Mexico, Honduras, and others, are used as transit zones.

¹⁸ Camacho cited by Marco Guerrera, in *Migraciones*, op. cit. p. 85.

¹⁹ Gardenia Chávez, contributions to the Shadow Report.

²⁰ 2000 U.S. Census.

²¹ FOMIN, Study on remittances sent by Latin Americans emigrants who reside in Spain.

Due to the restrictive control policies of destination and transit countries, there is a more frequent use of irregular means of migration in countries of origin, transit, and destination. These methods carry with them risks and violations of human rights on the part of loan sharks, and traffickers, as well as public officials.

Ecuadorian emigrants are organization in countries of origin and destination to confront the problem of the permanent vulnerability of their rights, and demand the construction and implementation of participatory public policies that recognize them as subjects with rights.

1.2 Irregular Emigration (Art. 5 y 8; Question 29)

Moses: "I am in a prison without walls, for I have no papers."²²

The State of Ecuador has not implemented a policy that promotes the use of the term "undocumented persons" or "persons in irregular situations" for those that have not been authorized to enter a given country. Their failure to do so results in the continuing use of the term "illegals" when referring to Ecuadorian emigrants that have not been able to normalize their trip or situation which, in turn, leads to discrimination against them and limits the free exercise of their rights, along with the rights of their families in their countries of origin, transit, and destination.

In practice, the right of migrant workers and their families to freely leave Ecuador is subject to socio-economic conditions as well as policies of control and restriction in transit and destination countries that relativize this freedom. Human mobility, therefore, is far from an easy freedom to exercise.

These policies of migratory control and restriction have the direct result of forcing emigrants to "enter into paying agreements"²³ with irregular migration webs which expose them to an environment where they may become victims of crimes and/or the violations of their human rights.

The right of migrant workers and their families to return to and remain in Ecuador when they choose is also not realistically a right they can exercise, given the absence of social and economic policy that would allow for voluntary return with dignity.

1.2.1 Illegal Trafficking of Migrants (Article 68, Questions 27 and 28)

The Ecuadorian state still has not adopted effective methods for impeding and eliminating clandestine movement and employment of migrant workers in irregular situations.

²² Memory from the Comprehensive Support Workshop for Migrants and their Families, Municipality of Cuenca, February, 2006.

²³ Cartilla Migratoria No. 4, Truths and half-truths about migration, Plan Migración, Comunicación y Desarrollo, January 2003, p. 3

Ecuador, at the constitutional level, prohibits human trafficking in any form.²⁴ The illegal trafficking of migrants is considered a crime and methods for protection of the victims have been established in the Penal Code and the Children and Adolescents Code. However, there is work to be done in order to bring things up to international standards. The most important step will be to designate funding to devote to human, economic, and technical resources that would allow for effective investigations and punishments for those responsible for such crimes. Right now, most crimes involving human trafficking are committed with impunity.

To demonstrate this assertion: In 2005, the Ecuador Attorney General's office received 833 reports of human trafficking²⁵. Of those reports, the majority occurred in Pichincha (398) Azuay (207) and Galápagos (118). 497 investigations were opened, that is, 60% of the total number of formal complaints received. 81 cases were rejected, and 420 cases were recommended for prosecution. However, only 97 cases actually made it to the courtroom, (23%) and 43 of those cases were dismissed. A total of only 7 decisions (1.6%), were handed down from the Tribunal, only one of them not guilty. This clearly shows the ineffectiveness of the administration of justice in the investigation and punishment of the crime of human trafficking.

Guayas: 64 arrested for "coyoteism." On average, the Attorney General's Office receives about 10 reports of fraud perpetrated by traffickers each month. The number of reports regarding the illegal trafficking of migrants is almost non-existent, in spite of the fact that it is now considered a crime according to the reforms made to the penal code. According to Antonio Gagliardo, the District Attorney for the Migratory Crimes Unit of Guayas, the majority of arrests are made on the job because migrants are afraid to accuse and identify traffickers, and because they are given the option to attempt the voyage up to 3 times if the first try fails. He also indicated that his unit is currently processing 64 persons who were arrested for illegal trafficking of emigrants, one of whom has already been sentenced. Gagliardo believes the penalty imposed for the crime, 3 to 6 years if no actions against the integrity of migrants were committed during the crime, is not sufficient considering the damage that trafficking causes, and suggests that it should be accompanied by the seizure of goods that, in the majority of cases, are the products of illicit business. (BMS)²⁶

Even though the number of arrests for this crime has increased,²⁷ the state has not given information on the percentage of these arrests that have gone to trial, nor on how effectively those prosecutions have been. It also has not shown whether or not officers have respected human rights during investigations in order to avoid prejudice and risks to victims.

One exploratory study on charges brought by migrants shows that human traffickers continue to commit crimes with impunity. In cases where suspects are detained, they quickly go free due to the lack of legality surrounding the circumstances of their

²⁴ Art. 23, numeral 4, Constitution of the Republic of Ecuador. August 1998.

²⁵ Blanco y Negro Magazine, Publication of Grupo Hoy, Edimpres, Ecuador, March 25 of 2006, cited in the Cartilla Migratoria No. 15, in 2005

²⁶ Diario Hoy, January 7, 2006.

²⁷ According to statistics from the Dirección Nacional de Migración during the year 2006, 563 persons were detained for migrant trafficking.

arrests²⁸. Persons not directly involved are often arrested, and little effort is made to identify the intellectual authors behind the international trafficking of migrants.

Added into the equation are media reports of public figures involved in migrant trafficking. These figures include police officers, members of congress, and even members of the national soccer team, all of whom have allegedly used their positions to aid in the commission of trafficking crimes. The results of investigations regarding these allegations remain unknown.

When confronted with these situations, the Ecuadorian state puts the blame on the victims, indicating that investigations and prosecutions cannot go forward due to lack of collaboration on the part of the victims. What is not mentioned is the critical absence of effective mechanisms that would guarantee protection for victims and witnesses.

In spite of the fact that formal structures designed to prevent migrant trafficking exist, those structures have not produced results that amount to the effective prevention, investigation, and punishment of this crime.

Ecuador has not developed a policy that would promote penalization of persons, groups, or entities that use violence, threats, or intimidation against Ecuadorian migrant workers and their families in destination countries, especially against those who are undocumented. Additionally, the state has not worked to eliminate the hiring workers without standard labor practice guarantees, and has not moved to insure that such employers are punished without infringing upon the rights of migrant workers themselves.

In the state Plan for Migration, Communication and Development²⁹, effective measures to prevent the illegal trafficking of migrants.

Patricio Carpio affirms that an illegal migration industry, made up of human smugglers, loan sharks, and travel agencies that gather clients from both urban and rural areas has been increasing in size.³⁰

The price of emigrating climbs each year: in 1998 a voyage to the United States cost around 6,000 dollars. A year later, the price was 9000 dollars.³¹ "Migrants become indebted to loan sharks and smugglers use this debt as a tool to control migrants."³² This is an illicit activity that "generates more than 60 million dollars a year."³³

Ecuadorians are often forced to take irregular means in order to emigrate which means they must take out large loans and are often confronted with the "loss of their land or property at the hands of loan sharks... they then sell the property which contributes to a

²⁸ Diario Expreso, May 4, 2006.

²⁹ Plan Migración, Comunicación y Desarrollo, Inquiry for the Legal Project for Comprehensive Protection for Migrants and their Families, 2006.

³⁰ Cartilla Migratoria No. 15. Ecuadorian Migration: a Cultural Approximation, Plan Migración, Comunicación y Desarrollo, May, 2006, p. 6.

³¹ Walmsley Emily, 2001, cited by Marco Guerrero, op.cit. p. 65.

³² Guerrero Marco, op. cit. p. 65

³³ El Comercio, September 5, 2005.

slow process community disintegration and promotes social differentiation within families between those that stay and those that leave."³⁴

The illegal route to the United States used to consist of traveling legally to Mexico, and then crossing the border. At the end of the 90s, many began using counterfeited visas or taking out loans of around 7,000 to 9,000 dollars from loan sharks in order to pay traffickers to make arrangements for them to travel to New York on a flight that first stops in Central America. There, they are met by other traffickers who help them cross the border between the United States and Mexico.³⁵

The strengthening of border controls in 1998, resulted in the frequent use of sea travel as a means of migrant transport. Ecuadorian emigrants board ships to Mexico or Guatemala, places from which undocumented Ecuadorians are often deported, and then continue on to the United States.

The choice of illegal trafficking organizations to use maritime shipping routes entails the worrying prospect that U.S. Navy ships stationed at the base in Manta³⁶, might intercept boats transporting migrants. According to a March 2007 report by the Coalition Against Bases in Ecuador, "American military boats have illegally boarded 45 vessels, some carrying migrants and some fishing boats. In the process of these illegal boarding, at least 8 Ecuadorian vessels were sunk or destroyed between 2001 and June 2005". The Latin American Association of Human Rights (ALDHU) has stated that "The violation of Ecuadorian sovereignty by the United States armed forces has been further normalized by the signing an agreement for the use of the Base at Manta which authorizes the permanent presence of warships to patrol the Ecuadorian coast and intercept fishing boats in search of both migrant and drug trafficking."³⁷

In light of this agreement, the Ecuadorian state³⁸ has categorized these U.S. actions as "rescue operations" of Ecuadorian emigrants travelling illegally to Central America, and has indicated that they have arrived at an agreement with U.S. authorities that would require verification and authorization before the U.S. may sink any vessel. However, neither the Convention on the Law of the Sea, nor international maritime legislation addresses the sinking of vessels.

The most serious case occurred August 11, 2005, when a boat carrying 113 Ecuadorian emigrants that had set sail for Guatemala became shipwrecked near the northern border after the boat's motor presumably broke down. According to the Captain's report at the Port of Manta, 9 injured persons were found between Esmeraldas and Colombia (170 miles from Manta) after a group of traffickers sabotaged the engine because several

³⁴ Luciano Martínez Valle, *International migration and the rural labor market in Ecuador*, in Herrera, *Ecuadorian migration, transnationalism, networks and identities*, op. cit. p. 157.

³⁵ Jokisch Brad, cited by Ramírez, in *Redes transnacionales ...*, in Herrera, op.cit. p. 87.

³⁶ In 1999, the Ecuadorian state signed an agreement with the U.S. to establish a military base in the Port of Manta to combat illegal drug trafficking. This agreement expires 2009.

³⁷ Taken from <http://www.lacta.org/notic/2005/not0605a.htm>. The U.S. Navy has sunk 36 Ecuadorian vessels in the last 4 years.

³⁸ Ministry of Foreign Relations, through the Subsecretaria de Soberanía Diego Stacey.

migrants had neglected to pay them the eight thousand dollars they had demanded (APG).³⁹

In 2005, August 12 was declared a National Day of Memorial in honor of the emigrants. The event was used to demand that the Attorney General's office conduct an exhaustive investigation regarding the event and its connection with the illegal trafficking of migrants. The state was likewise urged to develop mechanisms to find humanitarian aid for those affected, punish those responsible, and pay compensation to the families of the victims. However, none of these requests have materialized into actions, and the day of memorial has been forgotten.

Until 2003, all that was needed to immigrate to Spain was between 2,000 and 2,500 dollars, a credit card, tourism plans, hotel reservations, and a return flight. With these items, one could stay in Spain for 3 months without a visa. Anyone who did not have these items was immediately deported. Now, some have opted to go first to Scandinavia before later attempting entrance into Spain, but migrant deportation in those countries can occur as well.⁴⁰

1.2.2 Illegal Trafficking of Children and Adolescents

According to a report by the Lost and Missing Children Support Program in Riobamba, sponsored by INFFA,⁴¹ ever since the 90s, the illegal trafficking of children from the cantons of Colta and Guamote in the province of Chimborazo to Colombia and Venezuela regularly occurs, but statistics are not mentioned, which points to the possibility that people are afraid to come forward and report the crime. The report establishes that, in the beginning, trafficking networks had connections with local authorities, particularly in the canton of Colta. The emigration of parents is among the causes mentioned because children who return home without their parents become more susceptible to living in situations of slavery.

The ICBF of Colombia recently found two indigenous minors in slave-like conditions in northeast Colombia and returned them to Ecuador⁴².

Child-slave traders scope out a community looking for families living under economic hardship, and then offer parents a better quality of life for them and their children if they will agree to authorize the release of their children to work abroad. This is realized through an agreement that gives the illusion of legality. The primary destinations for children whose guardians have signed such agreements are Venezuela and Colombia.⁴³

Between January and August of 2005, the Chimborazo Child Welfare Police (Dinapen) 89 complaints related to the abuse and/or disappearance of minors. According to Department Chief Álex Silva, the complaints regarding disappearances came predominantly from urban areas because the idea and practice of formal complaints does

³⁹ Vistazo Magazine, August 18, 2005.

⁴⁰ Ramírez Franklin, Transnational Networks ... In Herrera, op.cit. p. 88.

⁴¹ Cartilla Migratoria No. 2, Plan Migración Comunicación y Desarrollo, Ecuador-España.

⁴² Jesuit Refugee Service

⁴³ (MEC-FP) Blanco y Negro, 17/09/05

not figure into cultural norms in rural areas. Additionally, he states that indigenous communities in Chimborazo are aware that many children are sent abroad to work as domestic servants or beg for money in the street under parental consent, “And when parents authorize children’s exits, it is a bit complicated to intervene”.⁴⁴

Alexandra Moncada emphasizes that children and adolescents travelling alone in order to reunite with their families has become more and more common. This leaves them more exposed to the risk of becoming victims of human trafficking and the violation of their rights.

1.2.3 Human Trafficking (Question 6)

The Ecuadorian Constitution guarantees that children and adolescents are protected against human trafficking,⁴⁵ which is classified as a crime, and, together with other civil organizations, has developed a National Plan against Human Trafficking. The plan, however, has still not proven effective in preventing, investigating, prosecuting, and eradicating the crime. The approval of this plan as a State policy is a significant step forward, but implementation of the plan is lacking with respect to legal reform and concrete administrative measures. Let us hope that the state will permanently fund the plan so as to not repeat the experience of the National Plan for Human Rights.

The trafficking of women and young girls, the majority of whom become victims of sexual exploitation, occurs in the poorest areas of rural areas in Ecuador. From those regions, they are sent to Europe, Asia, even Africa, where adolescent women may be sold as many as 12 times. Men and young boys are also traded. Paco Gavilanes, a stand-in judge for the Chimborazo Children’s Court, explains that ‘The law is very clear in articles 109-110 of the Children’s Code, which gives a notary public the power to authorize children to leave the country... we cannot go against the law. The National Congress must enact reforms to avoid the trafficking of minors. Currently, one can easily gain authorization that allows children to leave the country and become victims of human traffickers through the application of these articles.’⁴⁶

According to an exploratory study done by the International Labor Organization (OIT)⁴⁷ on the internal trafficking of minors within Ecuador in 2006, female adolescents are the principal victims of human trafficking for the purpose of sexual exploitation at the internal and external levels. They are usually trafficked from Colombia and Ecuador to Peru and Chile. However, it is primarily poor, indigenous boys, girls, and adolescents who are the victims of human trafficking to Colombia, Venezuela, and Belgium for the purposes of begging for money, exploitation, and slave-labor.

⁴⁴ (MEC-FP) Blanco y Negro, 17/09/05

⁴⁵ Art. 50, numeral 4, Constitution of the Republic of Ecuador. August of 1998.

⁴⁶ (MEC-FP) Blanco y Negro, 17/09/05

⁴⁷ Oficina Internacional del Trabajo, OIT-Ecuador, *Quick study on the causes, consequences, magnitude, mechanisms, circuits, ends, and other important characteristics of child trafficking*, Quito-Ecuador, May-2006. Unedited document cited by Azucena Soledispa, CLADEM Ecuador.

The first group of victims is comprised of female adolescents ages 13 to 17, from lower-middle class socio-economic backgrounds. They are typically first year high school students who have completed their primary education. Most come from rural areas near the coast, but a small percentage are from eastern zones of the country. The second group of victims mentioned is made up of young boys and girls ages 4 to 17 from indigenous communities. There are usually members of poor families from rural areas in the provinces of Chimborazo, Tungurahua, and Imbabura. They typically have received little, if any, formal education.

During the investigation, 91 cases of human trafficking involving minors were discovered. From the beginning of 2005 up until the first few months of 2006, 116 victims of trafficking, the majority of them female adolescents being used for sexually exploitative purposes were discovered.

The OIT study decried the fact that "in the cases of human trafficking both to and from Ecuador children and adolescents of both sexes entered and left the country by land without any border control whatsoever, while those who traveled via plane often did so with forged documents, implicating negligence and complicity on the part of Ecuadorian authorities."

Due to the magnitude and persistence of the crime of human trafficking, the Pastoral Fronteriza Colombo – Ecuatoriana⁴⁸, has called on the states of Colombia and Ecuador to implement programs to educate, sensitize, and demand that border officials comply with the law while respecting the dignity of migrants and victims of trafficking.

The state must provide specific information regarding what advances are being made to combat human trafficking; specifically, it should announce the measures it will adopt to promote effective punishments in destination countries for persons, groups, or entities that use violence, threats, or intimidation against undocumented Ecuadorian migrant workers and their families. Undocumented migrants are particularly vulnerable to the possibility of being extorted by police, individual persons, or employers who use the threat of deportation as a form of coercion.

1.2.4 Cooperation in Host Countries

The idea that Ecuador has been unable to promote satisfactory conditions for migrant workers in host countries because those countries lack interest in the matter, or have not signed on to the Convention, masks the absence of a true state policy to protect its own nationals abroad and demonstrates the failure of the Ecuadorian state to adjust to the reality the facts present.

Spain and the U.S., both countries that have not signed on to the Convention, contain the largest percentage of Ecuadorian emigrants and have promoted pacts and agreements with the state of Ecuador on emigration. Confronted with those agreements, the position of the Ecuadorian state has been reactionary, responding only

⁴⁸ XVI Encuentro, Los Andes June 18 thru 20, 2007, hosted by by Mons. Arturo Correa Toro, Luis Antonio Sánchez, Gustavo Girón Higueta, Julio Terán Dutari Obispos de Ipiales y Tulcán, Tumaco e Ibarra, respectively.

to given requirements and stopping short of establishing protection mechanisms for its own population.

This is evidenced by the agreement on migratory flow regulations with Spain (2001), in which there is a clear submission to the policy established by the Spanish state which promotes the acquisition of cheap, flexible labor without questioning the limitations imposed on entrants, or establishing effective means to protect the human, economic, and cultural rights of migrants.

The agreements Ecuador has made with U.S. to control the trafficking of drugs and emigrants serve as another example of submission to the policies of foreign states and their logic of criminalization of migrants in order to reinforce their conception of security.

These behaviours show that the Ecuadorian state has not undergone a grand reflection or questioning of the logic that has made current migration policy one that functions as a mechanism for the political and economic interests of host countries, despite the fact that these policies may amount to consistent violation of the human rights of Ecuadorian nationals.

State actions in regards to the situation of Ecuadorians abroad have come from a strictly economic logic through which the state has set about transferring issues of concern to international organizations in order to insure destination countries' continued cooperation, foreign investment, and policies that favor remittances from Ecuadorians abroad. (VALLEJO, 2004).

This logic is also reflected in the limited compliance by Foreign Service officials in regard to their obligation to protect the human rights of Ecuadorian emigrants, as well as the few initiatives to promote collaborative actions with transit countries where the rights of Ecuadorians run an even greater risk as shown by the Committee to Help Refugees and Persons Displaced by Violence (CARDEV):⁴⁹

CARDEV verified the case of several Ecuadorian emigrants who were detained when the boat in which they were travelling in was found in "international waters" off the coast of Guatemala on January 25, 2006. According to interviewed detainees, the Ecuadorian Consul had visited them only once; he took their information, asked them if they had a lawyer, and, upon confirming this, never returned to visit them. The Consul indicated to CARDEV that upon learning that the detainees had an attorney, he "preferred not to further intervene". The official also told CARDEV that the situation of Ecuadorian migrants was very difficult considering the enormous human and economic costs incurred in migration. The official pointed out that due to the scarce resources at the Ecuadorian Embassy, they could not provide effective consular assistance.

⁴⁹ CARDEV Project for the Promotion and Defense of Human Rights of Ecuadorian citizens and migrants who have been detained or had their rights violated in transit or destination countries. Pilot project in Guatemala.

The defense attorney for the detainees pointed out to CARDEV that prosecutions are regularly unsuccessful because Guatemala Attorney General's office does not obtain evidence of wrongdoing by the accused. Detainees typically remain incarcerated for 3 months, gain their freedom, are moved to shelter for migrants, and later travel back to Ecuador.

Recommendations:

- The Ecuadorian state must move to promote the implementation of agreements that meet international standards for dealing with migrants abroad in irregular situations in order to eradicate stigmatization that affects the personal dignity of migrants. This must occur in both transit and destination countries.
- The Ecuadorian state must guarantee the right to freely leave the country. That is to say, the decision to emigrate must be free and voluntary, not coercive due to the lack of realization of their economic, social, and cultural rights. Additionally, the state must establish internal policies that regulate the observance of the human rights of migrants. Foreign policy should promote the modification of migration policies of control and restriction in transit and destination countries, and encourage them to favor policies of integration.
- The Ecuadorian state must adopt effective methods for preventing, investigating, punishing, and eradicating the trafficking and illegal or clandestine employment of undocumented migrant workers.
- The Ecuadorian state must adjust penalties for illegal migrant and human trafficking in order to make them uniform with international standards.
- The Ecuadorian state must implement the National Plan against Human Trafficking through a process of legal reform and concrete administrative measures. Likewise, a permanent budget allocation for the institutions put in charge of compliance with the Plan must be set aside for human, economic, and technical resources in order to assure the effective investigation and punishment of those responsible for human trafficking, as well as make sure victims are guaranteed safe environments and the assistance they need to re-enter their families and communities. The state must establish effective information, investigation, and punishment methods for illegal and clandestine travels by migrant workers and their families, both in Ecuador and abroad.
- The Ecuadorian state must implement foreign policy that promotes effective punishments for persons, groups, and entities that use violence, threats, or intimidation to exercise control over undocumented migrant workers or their families from Ecuador.
- The Ecuadorian state must implement foreign policy that promotes the adoption of measures to eliminate contracts that do not include fair labor guarantees for undocumented Ecuadorian migrant workers, including punishments for employers that do not diminish the rights or threaten the employment of the workers themselves.
- The Ecuadorian state must adopt policies to prevent and eliminate the spread of false information about emigration. Greater measures must be undertaken to detect

and eliminate the illegal or clandestine movements of migrant workers and their families, and impose effective punishments on those persons, groups, or entities that organize, facilitate, or direct those movements.

- The Ecuadorian state must establish effective controls along the northern and southern borders of the country in order to prevent the uncontrolled entrance and exit of children and adolescents that currently occurs.
- The Ecuadorian state must declare the clause on migration control in the drug trafficking control agreement with the United States unconstitutional. In the future, it must not promote the signing of agreements that connect repressive migration policy with drug trafficking. This should not prevent effective agreements to prevent and punish those guilty of human trafficking.
- The Ecuadorian state must promote agreements with destination countries that regulate the situation of Ecuadorian migrant workers and seek agreements with destination countries for the normalization of the situation of Ecuadorian migrant workers as a precondition to the hiring of temporary workers.

1.3 CONSULAR PROTECTION (Arts. 65 and 23)

Ecuador's constitution extends protection to Ecuadorian citizens in other countries. State response to the needs and problems of the immigrant population abroad has been largely reactionary, typified by disperse, isolated actions from the federal state.

While the Ecuadorian state has increased the number of consular programs in countries with large immigration flows, there is no guarantee that there are sufficient resources to deliver information and assistance to migrant workers and their families in regards to entrance and exit, remunerative activities, work conditions and life in the country of employment; And, above all, to attend to the socio-cultural needs of migrant workers and their families.

Consular functionaries "excuse themselves by citing the lack of human and economic resources, and the absence of legal standards" ... "the consular net does not extend to every area where protection is needed; for example, on the border between the United States and Mexico, there is no diplomatic representation, so migrants intercepted at the border are unprotected."⁵⁰

Additionally, Ecuadorian consulates do not push for transit and destination countries to adopt policies that do not discriminate against the Ecuadorian emigrant population, nor do they take effective measures to provide assistance and protection to victims of human trafficking, fraud, or situations of work exploitation and semi-slavery.⁵¹

Ecuadorian migrant workers decry the absence of guarantees of good, effective service in their own consulates, as well as excessive charges for services, and the absence of

⁵⁰ Rosenberg José, 2005, cited by Guerrero op. cit.

⁵¹ Migration Workshop, Cuenca.

any state mechanism to promote a participatory process in decision making. They also cite the difficulty of participating in the electoral process in an informed manner without fear or deportation.

The state responsibility to guarantee the freedom of emigrant family members who remain in Ecuador to exercise their rights is not fulfilled. This is the result of not having designed policies that would: channel consular information and action on emigrants who have gone missing, been detained, become sick, or died; intervene and provide social support for abandoned families; provide discrimination-free education to facilitate the integration of emigrant children; and provide legal counsel in Family Court cases.

Right now, a National Plan for Foreign Policy, in which the protection of Ecuadorian emigrants abroad figures prominently, is being promoted. Let us hope that it is duly approved, funded, and mechanisms for its oversight and evaluations are established.

Legal actions involving consular protection are weakly coordinated by the Ombudsman's Office which has representatives in Barcelona, Mexico, Hartford, Madrid, New York, Newport, and Rome, but their effectiveness is questionable. An exploratory study conducted by FLACSO and the Municipal state in Quito⁵² affirmed that the population of emigrants and their families have placed a large demand on the Ombudsman's office. However, the lack of consistent processing and follow up methods make it difficult to determine whether or not cases are given the proper attention they deserve.

The state has ratified specific and related conventions for the protection of migrants and their families, the Convention on Consular Relations chief among them.

1.3.1 Right to Life (Arts. 9 and 28)

The Ecuadorian state has not established a foreign or domestic policy to promote the right to life guarantee for migrant workers and their families in transit and destination countries, especially for undocumented migrants.

The Ecuadorian state has not established a foreign policy to promote the right of migrant workers and their families in transit and destination countries to receive urgent medical attention necessary to preserve their lives or prevent irreparable damage. Of special concern are undocumented migrants.

In cases where the right to life has been violated, the Ecuadorian consular service has demonstrated itself to be ineffective in guaranteeing victim's family's right to justice in transit and destination countries in terms of the investigation, prosecution, and punishment of those responsible, as well as obtaining reparations for the victim's families.

In cases where this right has been violated, the Ecuadorian consular service has demonstrated itself to be ineffective in guaranteeing victims' right to justice in transit

⁵² Sánchez Pinto, Silvana, Law suits by Migrants in the city of Quito, FLACSO- Municipio de Quito, 2006.

and destination countries in terms of the investigation, prosecution, and punishment of those responsible, as well as obtaining reparations for the victim.

According to the Plan for Migration, Communication and Development⁵³, the rights to life, bodily, psychological, and sexual integrity, and due process, and the most vulnerable to violation in among emigrants.

1.3.2 Right to personal integrity (Art. 10, Question 17)

The Ecuadorian state has not established a foreign policy to promote the guarantee the migrant workers and their families, especially those who are undocumented, will not be subjected to torture, or cruel, degrading, or inhumane punishment in transit and destination countries.

They kept us cuffed and chained' "They only allowed us one hour of daylight each day. When they moved us from the jail, our hands and feet were cuffed and chained. They treated us like criminals", said Wilmer Cevallos, one of 12 Ecuadorian emigrants who arrived in Quito Tuesday night after being deported from the United States. They had been detained in a San Antonio (Texas) prison for five months. "They gave us junk food, I missed my freedom and my family", said Cevallos, a 32 year old from Triunfo (Guayas), who farmed with his father-in-law before traveling illegally. The 12 emigrants left in November 2005, flying from Guayaquil to Panama, later crossing into Costa Rica, Nicaragua, El Salvador, Guatemala, México and the United States over land, where they were detained. Thanks to the support of the Migrant Family Network, the Federation of Ecuadorian Entities Abroad (FEDEE), and the Youth Foundation for Ecuadorian Hope, twelve people regained their freedom and boarded a plane back to the country. "We helped these migrants because they were locked up, had been rejected, and were penniless", said Marcela Costales, president of the Network. Gladys Jara, president of FEDEE in Ecuador, indicated that they would continue to help emigrants. (NST).⁵⁴

There have been cases in which emigrants have nervous breakdowns and have to return home due to the hostility they experience in destination societies and the lack of direct family support.⁵⁵

In cases where this right has been violated, the Ecuadorian consular service has demonstrated itself to be ineffective in guaranteeing victims' right to justice in transit and destination countries in terms of the investigation, prosecution, and punishment of those responsible, as well as obtaining reparations for the victim.

⁵³ Plan Migración, Comunicación y Desarrollo, Inquiry for the Legal Project for Comprehensive Protection for Migrants and their Families, 2006.

⁵⁴ Diario El Universo, April 6, 2006.

⁵⁵ Cartilla Migratoria No. 7, Emigratory processes in the south of Quito, Plan Migración Comunicación y Desarrollo, September, 2004, p. 13

1.3.3 Violation of sexual integrity

The CEDHU received a report⁵⁶ of a migrant woman forced to become a sex worker in Pontevedra, Spain. On the 18th of May, in 2003, Jakeline received a call from her friend Paola Mosquera who has been in Spain for 3 years. Paola asked Jakeline to come work as a waitress in a café and Jakeline accepted. Paola's mother (who works in Esmeraldas Superior Court) paid for the ticket to Spain, and Daniel Diaz Iglesia, the Spanish roommate of Paola, sent Jakeline the required invitation letter, necessary in order to secure a visa. On May 23rd, Jakeline traveled to Spain and worked in a cafe for the first two weeks. She was later moved to Vigo, Pontevedra where Paola cut off contact with her, and left her without money for a ticket. She found herself obligated to earn money as a prostitute. She was able to escape her situation after contacting a friend who informed her family back in Ecuador, who, with the support of representative Rafael Erazo were able to arrange for Jakeline's return. Paola had bought her ticket, but first made her sign several blank documents. Follow up: La CEDHU reported this crime to the Ambassador of Spain in Ecuador on the 27th of February, 2004, but has not returned. The case is scheduled to close March 17, 2004.

There are numerous testimonies from young women who report being sexually abused by migrant traffickers as part of the price for traveling with them.⁵⁷

Women working as domestic servants, especially those in irregular situations, have no legal standing and their rights to bodily, psychological, and sexual integrity, as well as their privacy, are often violated. They are also victims of exploitative laboral situations which often lead to psychological problems.⁵⁸

According to the inquiry conducted by the Plan for Migration, Communication, and Development⁵⁹, civil rights such as the rights to bodily, psychological, and sexual integrity, as well as personal liberty and due process, are routinely violated.

1.3.4 Prohibition of Slavery (Art. 11)

The Ecuadorian state has not established a foreign policy to promote the guarantee that migrant workers and their families, especially those who are undocumented, not be submitted to slavery or servitude in transit and destination countries.

⁵⁶ No. Registro: 0013841 Registration date July 10, 2003, HUMAN TRAFFICKING. Start Date: July 18, 2003. End Date: March 17, 2004. ESMERALDAS, CABECERA CANTONAL (ESMERALDAS). Exact location: VIGO / PONTEVEDRA / SPAIN.

⁵⁷ Claudia Pedone, Migration Strategies and Power, Abya Yala, Plan Migración, Comunicación y Desarrollo, Quito, 2006, p. 84.

⁵⁸ ACSUR- Las Segovias, 2001, p. 44-46, 106-109, cited by Guerrero, p. 112.

⁵⁹ Plan Migración, Comunicación y Desarrollo, Inquiry for the Legal Project for Comprehensive Protection for Migrants and their Families, 2006.

In cases where this right is violated, the Ecuadorian consular service has demonstrated itself to be incapable of guaranteeing the right to justice to victims in transit and destination countries with regards to the investigation, prosecution, punishment of those responsible, and the collection of reparations.

In a Workshop on the consequences of migration that took place in Cuenca, it was affirmed that conditions of semi-slavery, exploitation, and humiliation against migrant workers persist.

1.3.5 Right to have a private life free from arbitrary interference (Art. 14)

The Ecuadorian state has not established a foreign policy to promote the guarantee that migrant workers and their families not be subjected to illegal or arbitrary interference in their private lives, nor illegal attacks against their honor or good name.

The Ecuadorian Commission on Human Rights, CEDHU,⁶⁰ received a report in May 2006, from emigrants complaining of harassment on the part of officials in the Ministry of Foreign Relations, presumably, for their association with the Basque state involving actions to support the indigenous population, and for having offered to be interviewed by the media regarding migratory flows. The complainant said his mother, who lives in Cayambe, has also been investigated regarding the activities of her son. The Honorary Consul in Spain has asked for an investigation on the matter. No further information has been reported on the matter.

1.3.6 Prohibition of Expulsion (Art. 22)

The Ecuadorian state has not established a foreign policy that seeks to keep migrant workers and their families from being collectively expelled from transit and destination countries in favor of a policy that would examine and decide each case individually.

The precarious labor and legal conditions emigrants face translate into a precarious life in general. The fact that they are in irregular situations is a permanent worry in their lives. Testimonies state that (indigenous Saraguro emigrants) had to stay locked in their rented rooms for fear of being deported. Others lived in rural shacks in poor conditions in order to stay out of the city. In some cases they had to run away when control inspectors came to the greenhouses.⁶¹

⁶⁰ Register No.: 0015879, Index: Multiple (Den. 2 A 9 Afec.) 09:41:17 28 - 02 – 2007, registered as harassment, begun May 8, 2006. type of agent: state entity, number of victims: 2; in the Cayambe region, Pichincha Province.

⁶¹ Cartilla Migratoria No. 17, Immigration indigenous Saraguros to Vera, Spain, Plan Migración, Comunicación y Desarrollo, June, 2006, p. 13.

1.3.7 Right to be informed of your rights and emigration procedures (Art. 33)

The Ecuadorian state has not established a policy to deal with domestic information, nor has it established a foreign policy to promote the development of informational procedures on the rights of migrant workers and their families with regards to requirements for admission, their rights, and their obligations.

The reality is that only a few state institutions, city states, and NGOs like the Technical Unit for Migrant Worker Selection conduct information campaigns⁶² directed at Ecuadorian citizens who want to migrate.

The Ecuadorian state does not comply with its obligation to satisfy the necessities of emigrants in Ecuador with regard to information, counseling, actions to prevent migrant trafficking and scams, programs that facilitate voluntary return, educational programs on the right to social security, and mechanisms that facilitate the easy management of remittances.

1.3.8 Insertion into the workplace (Arts. 52, 25, 27, 66; Questions 18 and 20)

A solid labor policy in respect to migrant workers does not currently exist, and the lack of involvement on the part of the Ministry of Labor with regard to the design and implementation of specific actions to protect the human rights of national and foreign migrant workers is evident.

The Ecuadorian state has not implemented a policy that questions the fact that the Ecuadorian manpower is used exclusively to meet the needs of labor markets in destination countries, restricting migrant workers to jobs in city services, agriculture, and construction, effectively taking away the liberty of Ecuadorian emigrants the liberty to choose the type of jobs they will earn a living.

At the same time, the Ecuadorian state has not implemented a policy to encourage that the insertion of Ecuadorian emigrants into the workforce not be submitted to discriminatory decisions on the part of destination countries. As it stands, "migrant workers' access to employment in Spain is deliberately limited by the state due to the wishes of big businesses, social prejudices, and by the ethnic, sexual, and class forces of domination."⁶³

Insertion into the workforce in destination countries for both male and female Ecuadorian emigrants is concentrated in the service sector. The case of the United States differs from that of Spain. In the United States, 20% of women work in the textile industry, 20% do odd jobs, 15% work in the food industry, and 10% work as

⁶² Alisei, Unión Europea, Grupo Social FEPP, CEPAM, Pastoral Social, Municipio de Quito, Emigrant Guide on rights, and legal norms in destination countries, women and rights, 2005.

⁶³ Pedone Claudia, Estrategias ..., op. cit. pp. 246-247

domestic servants; 10% of men work in food services, construction, or other professionally skilled occupations.

In contrast, in the case of Spain, a large majority (around 60%) of women work as caregivers or maids, 16% have temporary technical, or professional positions, 8% work in agriculture, and 6% in industrial labor. The male workforce is also more concentrated. 20% work in agriculture, 35% work in construction, 13% in industrial labor, and another 13% perform professional duties (Gratton, 2004).

Fields in which solicitation of work visas are often met with success include: domestic services 30%, service industry 23%, construction 19%, hotel industry 8%, and agriculture 2%.⁶⁴

The Ecuadorian state has not developed a policy to promote the recognition of the right of Ecuadorian migrant workers and their families to receive social security, provided they comply with state requirements.

Emigrants do not contribute to social security, but they also do not receive it. They also receive no laboral or legal protection and are subject to abuses, laboral instability, low wages, living in deplorable conditions. They cannot protest, go on strike, receive medical treatment, or an education because they would risk being deported⁶⁵.

The conditions for emigrants are characterized by precarious laboral conditions, uncertain wages, increases in temporary contracts, long work days, sudden firings, withholding of severance pay, and lack of access to social benefits.

Citizens have fixed employment with decent pay, good qualifications, and social recognition; meanwhile, immigrants have precarious jobs, receive poor pay, low qualifications, and scarce social recognition. For this reason, immigrants often fill jobs involving manual labor that citizens do not wish to perform. This fact busts the myth that immigrant labor forces compete in the same market as citizen labor forces.⁶⁶

The emigrant population of indigenous Saraguros principally works in the intensive agriculture sector. Some men find work as bricklayers doing construction. More than 50% of Saraguros earn between 600 and 900 Euros a month, and 41% lack official work contracts. They work between 40 and 60 hours a week.⁶⁷

The only existing regulation relating to migrant workers in the country can be found in the hiring agreement (Arts. 24 to 30 of the Labor Code), which establishes: legalization of the contract by labor authorities, the obligation of the hired to live in the country, proof that the worker will return to his or her country of origin, the prohibition of the contracting of minors, and consular observation of the contract. However, these guidelines are rarely used in practice.⁶⁸

⁶⁴ Dirección Provincial de Trabajo y Asuntos Sociales de Barcelona, 1998, Cartilla 3, Cause of the recent Ecuadorian emigration process, January 2003, p. 15

⁶⁵ Cartilla Migratoria No. 4, op. cit. p. 14

⁶⁶ Cartilla Migratoria No. 8, op. cit. p. 14

⁶⁷ Cartilla Migratoria No. 17, op. cit. p. 7

⁶⁸ Doctor Jorge León, Dirección de Empleo y Recursos Humanos del Ministerio de Trabajo and an inquiry of Labor Inspectors in the city of Quito.

The Labor Inspectors at the Ministry of Labor, in practice, are not acting within the confines of the hiring agreement due to its non-use.

The Ministry of Labor and Employment does not participate in the selection commissions of The Ministry of Foreign Relations' Unit for the Selection of Migrant Workers, and the contracts they use do not comply with Ecuadorian labor laws. Some migrant organizations⁶⁹ question the function of the Unit because of its exclusive bend,⁷⁰ the lack of participation of social and labor organizations in the eligibility process, the absence of national criteria for eligibility, and the lack of follow-through regarding the benefits promised in their contracts. It is the only state initiative of its type, but it fits firmly into the standard policy of selecting manual laborers to meet the labor needs of host countries. Specifically, it promotes Ecuadorian migration to Spain and to meet Spanish labor quotas.

The Office of Consular Affairs and Authorization of the Ministry of Foreign Relations has not been able to resolve the diverse problems relating to the protection of the rights of Ecuadorians abroad. Issues such as consular representation during the deportation process, observance of the situation of minors, the prevention of illegal trafficking of migrants, human trafficking, support for operations that seek to locate missing persons, and assistance to Ecuadorians who have been detained.

Additionally, migrants have complains that they were mistreated or ignored by consular officials.⁷¹ When confronted with these accusations, the officials cite financial and administrative limitations that they say prevent them from assisting more people and providing better service.

The majority of projects that seek to establish higher standards of protection for Ecuadorian emigrants have not been approved.

1.3.9 Discrimination (Art. 7, 70, 31)

The Ecuadorian state has not implemented an effective policy that promotes that transit and destination countries guarantee that the rights of migrant workers and their families, as listed in the Convention on Migrant Workers, will be respected and upheld without discrimination, especially as it applies to migrants in irregular situations.

The state's own report recognizes that "Emigration is not easy. An ideology, associated with ethnic preferences and restrictive measures disqualifies migrants from society at large."

Claudia Pedone points out that "in Spain, after 1999, at a time which has coincided with the highest rates of Ecuadorian migrant arrivals in history, those in power have used rhetoric that alludes to the phenomenon of migration as an invasion, or a problem that

⁶⁹ Lactacuru, SJRM

⁷⁰ According to statistics from the Ministry of Foreign Relations in the period between 2002 – 2006, 2577 personas were hired.

⁷¹ Consulado de Madrid, July 2006.

must be dealt with through policies of restriction. It is a rhetoric based in cultural fundamentalism and implicitly carries with it a xenophobia which excludes immigrants, the others, from sharing equal rights with citizens... This discourse demonstrates the fallacy of the Spanish state's argument regarding the sharing of cultural and historic ties.⁷²

Claudia Pedone cites the example of the press's treatment of Totana in Spain, which considered the Ecuadorian group a social threat, propagating stereotypes that identified it with violence, crime, and danger. Meanwhile, the situation of labor exploitation in which many Ecuadorians find themselves in Spain was ignored.⁷³

The ethnic Roma in Vera, Spain, which represent 20% to 25% of the population, have openly hostile and racist attitudes toward the Ecuadorian population. These attitudes often produce confrontations, according to the Roma, because Ecuadorians are taking their jobs since they are willing to work for lower pay. One of the women interviewed stated that she was racist and that it would be better if all Ecuadorians left the country because of all the ill they caused⁷⁴.

The Ecuadorian state has not implemented a policy to promote that destination countries respect the cultural identity of migrant workers and their families, and that they do not prevent them from maintaining their cultural connections with Ecuador.

...There is exclusion, discrimination, and racism against Ecuadorian children and adolescents practiced by their Roma peers, as well as other Spaniards which often escalates to physical violence. Discrimination In the case of indigenous Saraguro children has become more evident with the fact that their hair braids are pulled on and they are called 'Peruvians' or hit. One father decided to cut his child's hair as a result.⁷⁵

The logic of domination and subordination also translates, in practice, into social exclusion for domestic servants in the form of spatial segregation, rejection of workers' traditional food practices, lack of days off, and reduced salaries.⁷⁶

With respect to the situation of Ecuadorian youth in Italy, Luca Queirolo states that "there are a series of strange parallel effects: on one hand, practices of resocialization and invention of ethnic identity, on the other, practices of exclusion (real and perceived) and self-exclusion of young people in mixed public spaces in daily life. Contrary to the belief that cultural proximity facilitates the process of integration, processes of discrimination, exclusion, and self-exclusion spread onto migrant groups who are, in many ways, substantially similar to the majority of the population in terms of religion, language, cultural norms, and values."⁷⁷

Ecuador is unknown in cultural terms. The majority of Spaniards show little interest in getting to know Ecuadorians better, in spite of the fact that they form a part of their daily

⁷² Pedone Claudia, *estrategias... op. cit.*, p. 109.

⁷³ Pedone, *estrategias ...op. cit.*, p.144 y 145.

⁷⁴ Cartilla Migración No. 17, p. 11

⁷⁵ Idem.

⁷⁶ Pedone, *estrategias, op. cit.*, p. 284

⁷⁷ Luca Queirolo, *between citizenship, discrimination, and secondary integration*, in Herrera, *Ecuadorian migration, transnationalism, networks and identities*, p. 425)

lives. They have been incorporated into the workforce, but they remain invisible in socio-cultural terms.⁷⁸

In the country of destination, immigrants lose the different dimensions that make up their social being, the only sphere they are identified with is laboral: as immigrants who perform manual labor. Racism, xenophobia, and segregation become products of this desocialization. Immigrants are made scapegoats for problems of unemployment, low wages, and insecurity, all of which serve to intensify the conflict.⁷⁹

Recommendations:

- **The Ecuadorian state must guarantee compliance with the obligation to provide appropriate consular services to distribute information and assistance to migrant workers and their families, especially to those who are undocumented.**
- **The Ecuadorian state must create a legal standard for the protection of civil and political rights of Ecuadorians abroad that is congruent with constitutional principals and international law.**
- **The Ecuadorian state must promote the adoption of policies that do not discriminate against the Ecuadorian emigrant population in transit and destination countries.**
- **The Ecuadorian state must implement a policy which questions the use of Ecuadorian manual labor exclusively to serve the needs of labor markets in destination countries, while restricting them to work only as civil servants, in construction, and agriculture.**
- **The Ecuadorian state must promote the recognition of migrant worker rights, especially those of undocumented migrants, to equal treatment in regards to wages, work conditions, and social security in destination countries.**
- **The Attorney General's Office must effectively comply with their duty, established in their Organic Law, to support migrants and design a strategy to meet with the high demand that exists.**
- **The state must promote agreements on regulation and integral protection for migrants with countries that frequently generate and receive large migrant populations, especially with the U.S., Spain, Italy, Colombia, Peru, Chile, and Venezuela. It must also revisit standing agreements with Spain regarding regulation of flows and with Peru on labor regulation. It should also implement the permanent Migratory Statute with Colombia.**
- **The State must implement the decisions of CAN, especially the Instrumento Andino de Migraciones Laborales, de Seguridad Social y Protección Consular.**

⁷⁸ Eduardo Kingman Garcés, *travellers and migrants, culture and high culture*, in Herrera, *Ecuadorian migration, transnationalism, networks and identities*, p. 472)

⁷⁹ *Cartilla Migratoria No. 7*, op. cit. p. 12

- The State must guarantee that the Ministry of Labor be the central entity in deciding the definition and application of policies for migrant workers.
- The State must implement permanent information and orientation services, as well as comprehensive assistance programs for migrant workers and their families.

1.4 *POLITICAL RIGHTS*⁸⁰ (Art. 41, Question 23)

The Ecuadorian state issued the Organic Law for the right of Ecuadorians abroad to vote in elections for the President and Vice President of the Republic of Ecuador⁸¹ four years after having established this right at the constitutional level.⁸²

The regulation of this law was issued in July 2006, three months after finalizing the voting registration period.

The law and its procedures established that the Ministry of Foreign Relations should inform the states of countries containing Ecuadorian emigrant populations seven months before the elections. The Supreme Electoral Court, in coordination with the Ministry of Foreign Relations was to fund, promote, and motivate Ecuadorians living abroad to participate in the electoral process through their consulates.⁸³

Statistics from the Supreme Electoral Court (TSE) indicate that 143,352 Ecuadorians, in 42 countries, voted between September 2005 and April 2006, a number that amounted to 1.5% of registered voters.

However, Ecuadorian emigrants did not have sufficient information with respect to the procedures required to exercise their right to vote, nor did they understand that the voting was optional and not obligatory.

Another difficulty encountered by Ecuadorians in irregular situations who live abroad was voter registration. Many were afraid registering to vote could lead to their deportation, while legal emigrants registered because they feared the failure to do so could lead to their being punished upon returning to Ecuador.⁸⁴

Added to the lack of proper information are factors such as time limitations, distance, and lack of resources, little confidence in Ecuadorian consulates, and the lack of consulate resources.

During the October 15th elections in 2006,⁸⁵ probably because of confusion, more people voted than were registered to vote which generated what the local press described as

⁸⁰ Jesuit Refugee Service-Ecuador, The electoral process of Ecuadorians abroad, press release, May 2007.

⁸¹ Published in the Registro Oficial on September 27, 2002.

⁸² From Art. 27, final version of the Political Constitution of the Republic, enacted June 19, 1998.

⁸³ Organic Law for the right of Ecuadorians abroad, Chapter 1, articles 3 y 4.

⁸⁴ Cfr. Nota published in various Spanish papers by EFE "Long lines and complaints of disorganization in the Ecuadorian vote in Spanish cities", October 16, 2006. Diario La Opinión de Murcia, "Chaos in Ecuadorian elections due to 40.000 person overvote", October 16, 2006. Diario El Universo, "Multitudes in the migrante vote", October 16, 2006.

⁸⁵ Testimony from Ecuadorians who assisted in the election, press releases and report done by Participación Ciudadana on

"chaos"⁸⁶. Logistical errors (inadequate space, incorrect registrations, poorly numbered tables, delays) which heightened the problem of disinformation were reported.

The Ecuadorian state did not establish mechanisms to protect undocumented Ecuadorians from being located by authorities in destination countries.

The total vote of Ecuadorian migrants had little relevancy in determining the outcome of the election. 84,000 votes were received, which represented 1.08% of the total vote.⁸⁷

A quarter of voters abroad voted "none of the above", which may be attributed to the fact that they are struggling for the right to vote in their destination countries as residents, rather than seeking changes in Ecuador.

Statistics on absenteeism show that it is necessary to review registration procedures for both voters in Ecuador and abroad to determine whether or not it is possible that someone could be registered twice. That would explain the discrepancies seen in previous votes. The procedures for voting on Election Day should also be reviewed.

A review should include looking for ways in which migrant participation can go further than just voting. Ecuadorian groups abroad should be made into active participants in the development of the country, and reclaim their status as citizens which migration often erodes.

On one hand, the idea that once immigrants begin the process of placement, and insertion into the society of destination countries, they assume new priorities and lives (looking for work, and a home) and leave behind the need to participate in political actions of their home country.

In the case of Ecuadorians in Spain, for example, the experience of migrant associations and NGOs that work with Ecuadorians, shows that the more integrated and stabilized they are in Spanish society, with guaranteed basic rights, the less interest they show towards the socio-economic and political reality in Ecuador.

Spain has recognized the right to suffrage at the local level. This has repercussions in regards to the understanding of a person as a subject with certain rights. It could also possibly diminish the emigrants' interest in voting in Ecuadorian elections, open new opportunities, and generate a new understanding of the bi-lateral connections generated by migration.

their observation of the vote abroad. Participación Ciudadana, in Alliance with the Asociación de Migrantes Ecuador Llacaru and SJRM, carried out the observation of the elections in Barcelona, Valencia, Madrid, Murcia, Génova, Milan, Rome, New York, and New Jersey, where approximately 88.5% of registered voters abroad are located. They sent out 30 volunteer observers, most of them Ecuadorians who were residents in those countries.

⁸⁶ Cfr. "Long lines and complaints of disorganization in the Ecuadorian vote in Spanish cities", October 16, 2006. Diario La Opinión de Murcia, "Chaos in Ecuadorian elections due to 40,000 person overvote", October 16, 2006. Diario El Universo, "Crowds of migrants vote", October 16, 2006. Testimony from Ecuadorians who assisted in the election corroborates: Eduardo Barahona (Madrid), Mariana García (Milán), Mario Cuzco (Barcelona).

⁸⁷ Total ballots in Ecuador plus the total number of absentee ballots .

Little participation in the U.S. may have been due to the fear of visibility by undocumented Ecuadorians, and also demonstrates how little interest they have in being involved in the process of reaffirmation of their citizenship and exercising the rights of their country of origin.

Recommendations

- The Ecuadorian state must guarantee the right to vote to Ecuadorians abroad by providing complete and pertinent information on requirements, procedures, and voting places to emigrants and their families.
- The Ecuadorian state must coordinate with destination countries to insure that elections go smoothly.
- The Ecuadorian state must take into consideration that a large number of Ecuadorian emigrants are already registered to vote in Ecuador. This means it may be necessary to implement a mechanism that allows for address changes, which may require the TSE to compile and send out a list of registered Ecuadorian emigrants in order for them to vote without re-registering.
- The Ecuadorian state must promote the regularization of migrant workers and their families in destination countries in order to prevent them from being deported for exercising their right to vote.
- The Ecuadorian state, through the Supreme Electoral Court, must assure that candidates in popular elections are intimately acquainted with the topic of migration and the situation of Ecuadorian emigrants, and encourage them include their plans for migration and show how they would effect the ability of emigrants and their families to exercise their rights
- In addition to establishing the right to vote in presidential elections, the Constitutional Assembly, which will convene in October 2007, must establish constitutional norms for recognizing the right of Ecuadorian emigrants to exercise other forms of political participation such as the right to be consulted, propose bills, and revoke the mandate conferred upon public officials

1.5 FAMILY SITUATIONS (Art. 4)

1.5.1 Gender

Migration has not contributed to the introduction of new forms of thinking and living with regard to family dynamics and couples. The patriarchal model in Ecuadorian society and in destination countries persists at a transnational level. So, "the same dynamic and hegemonic control with pre-established gender and power relations is maintained between couples, fathers/mothers, and male/female children."⁸⁸

⁸⁸ Cartilla Migratoria No. 12, Ecuadorian Migration and the use of new technologies of information and communication, Plan Migración comunicación y Desarrollo, noviembre 2005, p. 7

This order of things is also evident in remittances sent by emigrants, which serve the function of "symbolizing the parental authority to those who receive them... depending on the observance of the emigrant's values and ideology, they may serve function compliance according to what would be considered a "good son" or a "good wife".⁸⁹

On this topic, the Ecuadorian state continues its lack of compliance with its international obligations⁹⁰ to promote equality in gender relations and modify socio-cultural patterns in order to eliminate patriarchal models.

Likewise, destination countries, in spite of the feminization of labor and migration, do not incorporate specific measures to guarantee gender equity and promote positive actions to guarantee the observance of the rights of female migrant workers⁹¹.

1.5.2 Family Transformation

It is important to note that "male emigration from the rural south during the first waves of emigration happened at the expense of women who remained in charge of their children and agricultural production in order to form "new homes"⁹² without their male counterparts.

This situation was reversed in the last migratory wave when women migrated in larger numbers than men.⁹³ However, "women tried to maintain a transnational motherhood to mitigate criticism and avoid ostracism by other women family members, who generally equate a woman's migration with abandonment of her home since women most frequently are the forces that reunite their families."⁹⁴ So then, women keep their roles of sustainers of the home, though they have deeply complicated their ability to do so.

In the 2001 census, marriage statistics for the period between 1992 and 2001 showed a drop beginning after 1998. Meanwhile, the number of divorces began to rise.⁹⁵ In 2001, 67,741 marriages and 11,068 divorces occurred. In 2006, there were 67,456 marriages and 12,809 divorces.⁹⁶

In 2006, 916 separations were reported, and during 2007, 500 separations have been reported in Azuay. Among the causes mentioned for these separations is emigration. A newspaper report states that:

Men and women who migrate have difficulty adapting to a new way of life and a new culture. They feel alone and look for the companionship and affection that their loved ones cannot provide them in another person. Some couples carry on extramarital affairs

⁸⁹ Cartilla Migratoria No. 23, Migration and Family Systems, Plan Migración Comunicación y Desarrollo, October 2006, p. 5.

⁹⁰ As a member state of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW.

⁹¹ Gardenia Chávez, contributions to the Shadow Report.

⁹² Ramírez Frankin, op. cit. in Herrera, Ecuadorian migration... op. cit. p. 84

⁹³ Según en INEC-SIISE, 47% of the emigrant population are women.

⁹⁴ Claudia Pedone, You always take tours with you Cartilla No. 23, Plan Migración Comunicación y Desarrollo, op. cit. p. 10.

⁹⁵ Cartilla 23, op. cit. p. 8

⁹⁶ Registro Civil e INEC, El Comercio, Wave of divorces spawned by emigration, June 17, 2007, p. 11

without the other person knowing, and when the other person does find out, they sometimes pretend as if it isn't happening in order to maintain the family unit and prevent suffering on the part of the children. Ruptures do not happen for social or economic convenience of couples and children.⁹⁷

Ecuadorian emigration has reconfigured the family unit. 47%⁹⁸ of emigrants are women. Some of them opted to emigrate in order to gain economic independence, to escape situations of interfamily violence, or the limitation of their rights. According to the Defence for Children International, 46.5% of children and adolescents from Ecuador have parents living outside the country.⁹⁹ Each day it becomes more and more evident that migration is used as a family strategy activated by information and support networks.

Claudia Pedone states that "children of migrants consider their grandparents as their parents at the emotional level, but they do not recognize their maternal or paternal authority. Generational conflicts arise in respect to rules and their studies. There are no statistics in Ecuador that show how many, but many grandmothers have taken charge of domestic groups."¹⁰⁰

37% of emigrants are single, many of them sons of the head of the house who habitually send remittances to their parents.¹⁰¹ 54% of the total number of emigrants are married, 89% of which have left children who are minors in Ecuador. One study in the south of Quito established that grandparents took charge of their grandchildren. Of the total number of emigrants, 22% live with their spouse or children, and 47% did not live with anyone in their immediate family. According to studies conducted by the Immigration Observatory in Spain, and the InterAmerican Development Bank (BID) in the EU, 60% did not intend to take their family with them to their destination country, while 39.7% did. 67% believed they would return to Ecuador within 5 years.¹⁰²

In spite of the fact that many families have interwoven a complex transnational network that strengthens emotional bonds that insure strong family connections,¹⁰³ in most cases, "One of the consequences of emigration is the separation of couples and children, which carries an emotional cost and prevents them from being able to talk of their family in a traditional manner. Their traditional family functions become difficult to fulfill and familiar fragmentation is produced."¹⁰⁴

When parents leave, children come under the care of other family members and often suffer behavioral changes, especially in school. Changes in health, attention, learning, and discipline also appear. There is no one in the home to enforce limits or clear parameters. Their relationships with their grandparents are often difficult, and children may become rebellious or depressed which can lead to the consumption of alcohol or

⁹⁷ El Comercio, Wave of divorces spawned by emigration, June 17, 2007, p. 11

⁹⁸ Source: INEC / SIISE

⁹⁹ María Fernanda Egas, "Remittance Children", in *Revista Vistazo*, N° 797, November 1, 2000, p. 28.

¹⁰⁰ Pedone Claudia, *estrategias...* op. cit. pp. 218 y 219.

¹⁰¹ BID-MIF, *Remittances senders and receivers: tracking the transnational channels*, 2003, Cartilla 18, p. 11

¹⁰² Cartilla No. 18, *Effects of Ecuadorian emigration and the middle-distant future of remittances*, Plan Migración Comunicación y Desarrollo, p. 11 y 12

¹⁰³ Cartilla Migración No. 23, *Migration and family systems*, October 2006, p. 5

¹⁰⁴ Cartilla Migración No 7, op. cit., p. 4 y 5

drugs, early pregnancy, or even suicide. Young people want to escape the prisons of loneliness, misunderstanding, and feeling unimportant.¹⁰⁵

Contrary to the stigmatizing discourse that has been spreading in Ecuador through the media and the education system, "there is no proof that children of migrants are more violent or engage in more criminal activity than other youths their age."¹⁰⁶ What is worrying is the absence of state policies that address and debunk these negative stereotypes which can damage the dignity of children of migrants and directly impede the exercise of their human rights.

A study of emigrant family members,¹⁰⁷ indicated that the Ecuadorian state failed to guarantee them the free exercise of following rights: access to information, access to family justice, procedures for acquiring legal documents, consular assistance and protection regarding information on family members in transit and destination countries, economic, social, and cultural rights (especially to those who have been abandoned), and discrimination free education that facilitates integration.

1.5.3 Children of Emigrants and Education

Children who live with their grandparents as a result of their parents having emigrated are stigmatized in educational institutions. They experience subtle or open disapproval from others which makes them feel strange or abnormal and limits their possibility for growth.¹⁰⁸

"In a study conducted in the south of Guayaquil, the grade point average of students whose parents are migrants is approximately 7 tenths lower than that of other students," which indicates that "the emotional effects of the physical separation of the family influence their studies."¹⁰⁹ However, it must be considered that this finding could be the result of the unfavorable environment in which the children of emigrants find themselves at school with regards to negative stereotyping. The state is also responsible and should implement public policies that combat negative stereotypes associated with the children of emigrants.

Another finding in the study points out that "if the father and the mother have emigrated, children are less likely to remain in school". Finally, it was established that "a person whose home receives 100 dollars in remittances per month, has a 45% attendance rate if his or her parents received low-level education, while that number climbs to 70% when the child has parents who have graduated from high school. For children whose parents graduated from college, the number is even higher."¹¹⁰

¹⁰⁵ Cartilla Migación No. 13, The subject in the migration phenomenon, February 2006, p. 12 y 13

¹⁰⁶ Cartilla No. 23, op. cit. p. 13.

¹⁰⁷ Plan Migración, Comunicación y Desarrollo, Inquiry for the Legal Project for Comprehensive Protection for Migrants and their Families, 2006.

¹⁰⁸ Cartilla 13, p. 14

¹⁰⁹ Remittances and Scholarship, Cartillas sobre Migración No. 20, July 2006.

¹¹⁰ Remittances and Scholarship, Cartillas sobre Migración No. 20, July 2006.

These statistics reveal the education in Ecuador continues to be a privilege given to those whose families can afford it, rather than a right that is guaranteed by the state for everyone.

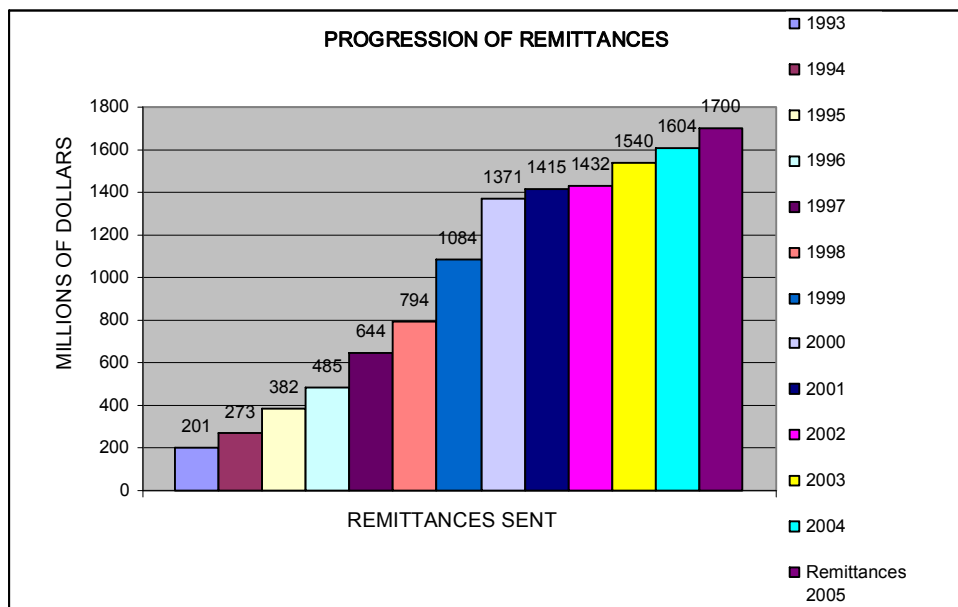
1.5.4 Remittances (Art. 47)

Remittances sent back to Ecuador have consistently grown since 1999. Between 2000 and 2001, they were the second largest means of income in the country after petroleum exports.

62% of male emigrants 57% of female emigrants sent remittances during the last year. According to Bendixen and Associates, 14% of the population receives remittances. Women are the primary recipients at 66%. Persons making less than 500 dollars a month received 77% of remittances. The use of remittances breaks down like this: 61% in daily expenditures, 17% discretionary expenditures, 8% investments in businesses, 8% savings, 4% for property purchases, and 2% for education.

Emigrant worries about the proposition of state control of remittances whereby they might be used to develop infrastructure and other programs must be taken into account. Participation from emigrants and their families is indispensable in regards to establishing a future for remittances that does not diminish the rights of those who generate them.

ECUADOR: PROGRESSION OF REMITTANCES 1993-2005



Source: Central Bank of Ecuador

In 2002, the Ministry of Industry, Commerce, Incorporation, and Fishing began the Support Program to Generate Foreign Investment and Commerce Opportunities for Ecuadorian Emigrants. The Program was discontinued and its results are unknown. In September of 2006, the Central Bank of Ecuador signed an agreement with the Spanish

Bank "Caixa" Catalunya to reduce the cost of sending remittances. This program has not caught on and is not widely used.

The state affirms that the economy has grown since 2000, largely because of petroleum and remittances from migrants, but it is not recognized that remittances are primarily used by recipients to purchase essentials, not for purposes of production.

The proposal which has caught on most, though it has not been sufficiently analyzed, is one of "co-development" which would oblige migrants and their families to "invest" in the country while the business sector does not have the same obligation¹¹¹.

Claudia Pedone questions the official discourse that remittances sustain the national economy. Her ethnographic analysis indicates that most of those who receive remittances invest them in everyday needs because the amount of money received is not sufficient to use for productive projects. She points out that families tend to invest in destination countries where there is more economic and political stability.¹¹²

One million people or 14% of adult Ecuadorians receive remittances from family members abroad.¹¹³ In 2002, the average amount of money sent from Spain, where the average salary is 637 Euros a month, was estimated to be around 369 Euros monthly. In the United States, the average amount sent back is 537 dollars, while the average salary is 987 dollars.¹¹⁴

Remittances sent by parents causes young people and children to become involved in a form of consumer society where they can accumulate money without having a good education, and without the affection of their parents. There are parents who don't send remittances to their children, economically abandoning them and increasingly the children's' level of poverty.¹¹⁵

Recommendations

- The Ecuadorian state must promote equitable gender relations and adopt appropriate methods to modify socio-cultural patterns and eliminate inequality for women within family structures, and in society in general.
- The Ecuadorian state must recognize that Ecuadorian women have assumed a disproportional burden as a result of emigratory processes as the sole provider of socialization, and economic well being, regardless of whether or not it is she or the father who emigrates. Upon the recognition of this fact, the state must enact policies and adopt methods that re-establish equality for women immersed in the migratory process.

¹¹¹ Gardenia Chávez, contributions to the Shadow Report.

¹¹² Pedone Claudia, *estrategias...* op. cit., p. 319.

¹¹³ BID, Multi-lateral investment Fund, Recipients of remittances in Ecuador, a market investigation, Ecuador, May 2003, in Cartilla 18, p. 8

¹¹⁴ Cartilla 18, op. cit. p. 11

¹¹⁵ Cartilla No. 18, op. cit. p. 4

- The Ecuadorian state must recognize the existence of new family models that arise as a result of emigration, fully integrate the “transnational family” into society, and adopt methods to prevent the stigmatization of the children of emigrants.
- The Ecuadorian state must guarantee the observance of right of emigrant children to education. This must include the prevention, investigation, and punishment of acts or failures to act that attempt to prevent the exercise of that right, such as stigmatizing speech from teachers or administrators, and acts of discrimination or exclusion.
- The Ecuadorian state must promote binational agreements with destination countries that facilitate the exercise of family rights such as: family reunification, nourishment, childcare, and divorce.
- The Ecuadorian state, in coordination with civil society, must establish an effective policy that provides state services to attend to the needs of migrant workers and their families.

1.6 EMIGRATION OF POPULATIONS WITH MEDIUM AND HIGH LEVELS OF EDUCATION AND TRAINING AND THE SPECIAL SITUATION OF MEDICAL PROFESSIONALS

The state report recognizes that “Ecuadorian emigrants, in many cases, were highly qualified laborers that could have productive in Ecuador”.

The policy of destination countries of selecting Ecuadorian migrant workers allows them to obtain the cheapest possible manual labor, not only in terms of the salaries paid to workers, but in money saved on worker training.¹¹⁶

Ecuador has invested in the professional training of its population which, upon their emigrating, transform into productive laborers in other countries, the fruits of their education lost by their home country. Professionals and technicians possess even greater training and their intellectual capability is wasted as they rarely work in the fields in which they are trained in their destination country, but rather work in positions unrelated to the profession for which they have trained. There is also a group of highly qualified experts who easily leave the country, principally for the United States, causing a “brain drain.”¹¹⁷

This situation is evident from occupational statistics of Ecuadorian emigrants in 2005¹¹⁸: of the 663,601 persons whose exit was registered by the National Office of Migration,

¹¹⁶ Cartilla Migratoria No. 8. The Migration process in the south of Quito, Plan Migración Comunicación y Desarrollo, Ecuador-España, September 2004, p. 13 y 14

¹¹⁷ Cartilla Migratoria No. 18, Effects of Ecuadorian emigration and the middle-distant future of remittances, Plan Migración Comunicación y Desarrollo, Ecuador-Spain, June 2006, p. 5.

¹¹⁸ Instituto Nacional de Estadística y Censos, Anuario de Migración Internacional, 2005, Quito, 2007.

255,516, or 61.1%, were professionals, scientists, and intellectuals¹¹⁹. 50,072, or 12%, were office workers.

In spite of this, Ecuador has not established a foreign policy to promote that destination countries recognize professional qualifications acquired in Ecuador instead of employing them in positions far beneath their capacity.

The selection of manual labor or selective importation accelerates the problem of brain drain in Ecuador as the most capable and best prepared are selected to work abroad. This contributes to stalled socio-economic development. The disappearance of human capital is another great loss suffered due to emigration, one for which no reparations are paid¹²⁰.

Social and technical leaders of organizations with whom the group Fondo Ecuatoriano Populorum Progressio (FEPP) has worked, "have migrated abroad... the organization has lost its leaders and sees its day to day functions affected, making the continuations of projects difficult, and leading to a cultural decapitalization."¹²¹

Additionally, Martínez indicates that "In the province of Cañar, the emigration of young leaders who were trained in the 1980s during the irrigation experiments conducted by the NGO Central Ecuador Agricultural Service, has resulted in a cultural decapitalization as the organization no longer has any teams sufficiently trained to take over the job in the community."¹²²

The flight of persons with secondary and university educations is also confirmed by the following statistics:

A study conducted in the south of Guayaquil, established that a number of migrant, 37.64% had at least a secondary education. 22% had finished collage, and 21.56% had finished primary schooling.¹²³

A study in southern Quito established that 58% of emigrants had finished high school, 29% had finished college, and 1.1% had finished primary school.¹²⁴

In the United States, 20.38% had finished their primary studies, 24.10 had bachelor degrees, and 1.92% had graduate degrees according to the 2000 U.S. Census.

In Spain, Ecuadorian emigrants had an average education level. 8.7% had finished college, 20.3% had not finished collage, 25.6% had only finished primary school, and

¹¹⁹ According to occupational groups in the Clasificación Internacional Uniforme de Ocupaciones (CIUO) of the OIT: Professionals dedicated to research, application of scientific or artistic methods and techniques, or teaching. Eg. Engineers, doctors, physicists, mathematicians, statisticians, chemists, dentists, etc.

¹²⁰ Cartilla Migratoria No. 4, Truths and half-truths about Migration, Plan Migración Comunicación y Desarrollo, Ecuador-Spain, January 2003, p. 13

¹²¹ Martínez Luciano, 2004, p. 10, cited by Marco Guerrero in Migration, Leadership, and Development, op.cit. p. 168

¹²² Luciano Martínez, 2004, p. 10, cited by Marco Guerrero in Migration, Leadership, and Development, op.cit. p. 159

¹²³ Cartillas sobre Migración No. 20, Remittance and Scholarship, Plan Migración, Comunicación y Desarrollo, July 2006.

¹²⁴ Cartilla Migratoria, No. 7, The Migration process in the south of Quito, p.7 Plan Migración, Comunicación y Desarrollo, Ecuador-Spain, September 2004.

the rest had bachelor degrees, no illiterates were found according to a FOMIN study on remittances sent by Latin American emigrants in Spain.

According to UN estimations, "in 2002, 200 thousand Ecuadorian professionals had emigrated to Spain, Chile, Colombia, and the U.S., in search of better conditions. This brain drain cost the country millions of dollars".¹²⁵

The fact that "the professional education and training of Ecuadorian emigrants was paid for entirely by Ecuador, and is therefore an absolute gain for destination countries, and an absolute loss for Ecuador,"¹²⁶ must be considered.

In addition, the departure of unqualified manual labor also has a large impact and must be taken into account due to the fact that it is necessary for the development of a nation.¹²⁷ Additionally, each person, regardless of distinction, is an important person in themselves.

In relation to the specific case of public health professionals, it is reported that the National Office of Migration registered the exit of 386,440 persons, among them 2,800 doctors (10% of the total number of Ecuadorian Medical Federation affiliates), the majority of them young, who left principally for Chile, according to an exploratory study¹²⁸. The cited study also estimates that around 200,000 of the health professionals that leave each year do not return to the country. But the problem of migration of health personnel is not easy to analyze because of the lack of specific records of entry and exit that would make it possible to gather real, quantitative information on this phenomenon.

In the same study, Zoila Cazar, Chief Nurse in the Ministry of Public Health's Office of Health Services, was interviewed about the consequences of emigration on the personnel and health systems in Ecuador. She indicated the Ministry does not have concrete information, but it is known that women emigrate more than men because they are more easily able to find employment as domestic workers. The Ministry apparently does not fully appreciate the problem as those who leave have often worked in private or semi-private offices.

When interviewed, Rosa Santamaría, president of the Ecuadorian Nurses Federation, stated that:

The Ecuadorian state invests in university training which benefits developed countries who find themselves with qualified nurses and auxiliary personnel without having to pay any training cost. For the health system in Ecuador, this represents the loss of a qualified resource which is then replaced by less qualified personnel who provide substandard care. The system tries to overcome this problem by forming mid-level facilities without the necessary preparations, whereby it opens itself up to empiricism. The Ministry of Public Health and other diverse professional organizations do not have

¹²⁵ Cartilla Migratoria No. 22, The economic impact of emigration in Ecuador, September 2006, p. 14 and Cartilla 4, Plan Migración Comunicación y Desarrollo, p. 13.

¹²⁶ Cartilla Migratoria No.4, 12

¹²⁷ Cartilla Migratoria No. 22, The economic impact of emigration in Ecuador, September 2006, p. 16.

¹²⁸ Internacional de Servicios Públicos, Women and International Migration in the Public Health Sector, Jacqueline Bonilla M.S.C., 2003-10-01.

access to concrete, detailed information on the emigration of their members. Low salaries, laboral instability, and rising unemployment are the determining factors for health workers.

Public Services International affirms that health workers, mostly women (as is the case in Ecuador), are abandoning their profession due to the insufficient funding for health services, low salaries, excessive workload, inadequate supplies, and violence and discrimination in the workplace. They likewise affirm that there is a massive demand for health workers abroad in developed countries, which negatively impacts the health services of developing nations (like Ecuador) who have invested in the training of health personnel only to lose those workers to emigration¹²⁹.

Recommendations:

- The Ecuadorian state must guarantee that professionals, especially health workers, can count on proper labor conditions and salaries in order to avoid the decision of whether or not to emigrate. This will protect the country from the consequences of the exit of highly qualified health workers.
- The Ecuadorian state, through its foreign policy, must promote the modification of worker selection policies in destination countries that pull high percentages of the educated population out of the country, and promote the implementation of agreements centered on equitable dialogue.
- The Ecuadorian state, must implement a policy that encourages the incorporation of Ecuadorian emigrants in destination countries into the work sector that corresponds with their academic and professional training, and ensure that they are paid accordingly.
- The Ecuadorian state must implement a policy to promote that Ecuadorian migrant workers selected for their capabilities receive specialty training in destination countries, and promote conditions that facilitate the return of those workers to Ecuador so that they might reinvest their knowledge and experience in their home country.
- The Ecuadorian state must implement ethical hiring principals for health professionals that emigrate from Ecuador that are based on equality of opportunity for employment in quality health service positions in destination countries, as well as regulate private recruiting operations to avoid the violation of the Rights of health workers.
- The Ecuadorian state must implement a policy that promotes the guarantee of the rights and well being of migrant health workers in destination countries, including the right to form unions.
- The Ecuadorian state must inform potential migrant health workers of the dangers, rights, and costs involved in emigration.
- The Ecuadorian state must guarantee gender sensitivity in its foreign policy, and take into consideration the great risks posed to female migrant workers, sexual

¹²⁹ Cartilla de la Internacional de Servicios Públicos on the ethics of the migration of health workers.

discrimination in the form of inequitable pay, and the need to respect women's right to form unions in destination countries.

2 IMMIGRATION

2.1 CHARACTERIZATION OF IMMIGRATORY FLOWS (Question 3)

2.1.1 Magnitude of Flows

Qualitative studies conducted in the country regarding immigration establish that, in the last 6 years, Ecuador has become a destination and transit country for foreign persons, especially Colombian and Peruvians.

However, quantitative information on immigration is scarce, scattered, and not adequately systemized. It is difficult to determine the number of foreign persons in the country and their migratory condition. There is no central entity that processes all the information¹³⁰ and uniform gauges of immigration have not been decided upon. These factors make the characterization of migratory flows and the determining of public policies of intervention difficult.

2.1.1.1 Population Registry

According to the last Population and Housing Census (INEC-2001)¹³¹, Ecuador's population consisted of 12,156,608 persons, 104,130 (0.86%) of which were foreign. Of the total number registered, 49.6% were women, 66% were between the ages of 20 and 65, and 48% belonged to the economically active population. They came from 171 different countries: 83% from the Americas, 11.8% from Europe, 3.7% from Asia, and the rest from Africa and Oceania. As far as nationality, 49.5% (51,556) were Colombian, 10.7% (11,112) were from the U.S., 5.5% (5,682) were Peruvian, 4.5% (4,634) were Chilean, 3% were Spanish (3,099), and 26.9% were of other nationalities (28,047).

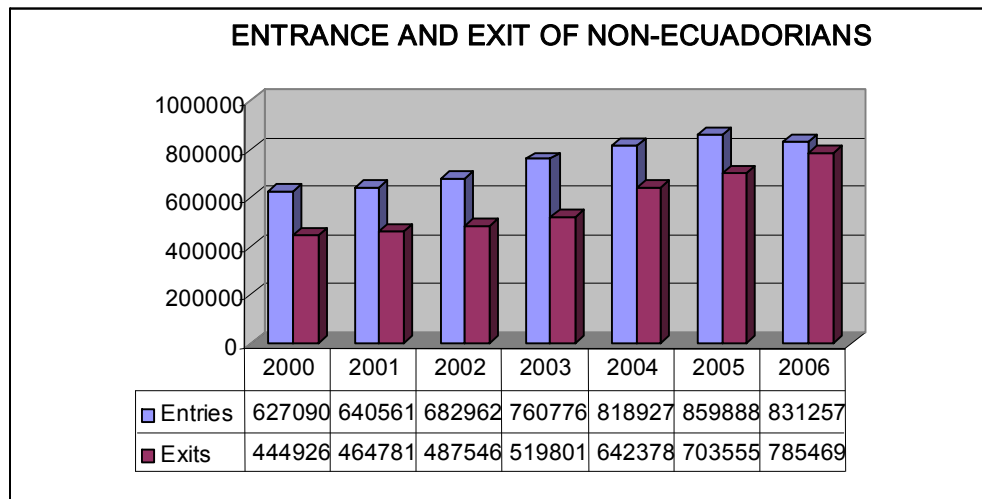
It should be noted that the census counted foreign persons found in the country at that moment without distinguishing the motives for their presence, so these numbers include tourists. Because of their methodology, and the implications of irregular stays, they did not fully capture the number of all foreign persons found in the country. In addition, because of the date in which it was realized, it does not include the primary migratory flows, especially from the Colombian population, that have increased since the year 2002.

¹³⁰From the records of: Dirección Nacional de Migración de la Policía Nacional del Ecuador on migratory movements and census records; Dirección de Extranjería del Ministerio de Gobierno on immigrant or resident visas; Dirección de Migración y Extranjería del Ministerio de Relaciones Exteriores on non-immigrant visa; and in Instituto Nacional de Estadísticas y Censos INEC on foreign population and migratory movements.

¹³¹ Instituto Nacional de Estadísticas y Censos (INEC), VI Censo de Población y Vivienda, 2001.

2.1.1.2 Records of Migratory Movements¹³²

According to the INEC¹³³, between January of 2000 and December of 2005, 4,390,204 entries and 3,267,980 exits of foreign persons resulted in a net immigration of 1,122,217. If the number of 45,788, registered by the National Office of Migration in 2006¹³⁴ is added to this figure, the net number of immigrants in the last 6 years would be 1,173,005.



**Source: INEC Anuario de Migración Internacional (2000 to 2005)
National Office of Migration (2006)
Conducted by: Coalición CTMF**

As is apparent, migratory movements have consistently grown since the year 2000, but the fact that those numbers do not necessarily represent the number of persons who have entered or exited the country must be taken into account. The same person could have entered and exited the country several times and others could have entered or exited without being registered¹³⁵. However, as the INEC confirms, the size of the movements reflect proportions and tendencies that relate to the true number of persons.¹³⁶

According to statistics from the National Office of Migration¹³⁷, the movements registered represent entries of persons from over 195 countries from 6 continents, the most frequent being entries from Colombia, the U.S., and Peru.¹³⁸ Of those, the countries which have generated the largest net number of immigrants are Peru and

¹³² This record does not currently exist, the database that existed in the DNM until 2005, was confiscated by the Ministerio Público, during an corruption investigation. The reconstruction of past statistics has been done manually.

¹³³ INEC, Anuario de Migración Internacional Año 2005, Visual Workshops INEC, 2005, www.inec.gov.ec

¹³⁴ Statistic obtained through an access to information petition, July 2006.

¹³⁵ There are more than 72 known secret pasajes along the Colombian border with Ecuador. Baca Carbo Raúl, Elements a policy on foreignness, Planex 2006

¹³⁶ INEC, Anuario Estadístico Migración, Ob Cit, p. 8

¹³⁷ Obtained through a petition for the free access to information, July 2007.

¹³⁸ They continue to be important, but in far smaller numbers, around 30,000 and 12,000 annual entries to Spain, Germany, Great Britain, Argentina, Venezuela, Canada France, and Italy.

Colombia. Together, they produced 882,398 immigrants, or approximately 77.41% of the net number of immigrants for that period.

MIGRATION MOVEMENT BY NATIONALITY

Nationality	Number of People Entering	Number of People Exiting	Balance	% General Balance
Colombia	1.406.169	835.948	570.221	50
USA	1.191.464	1.172.023	19.441	2
Perú	685.252	373.075	312.177	27
Other countries	2.031.219	1.793.211	238.008	21
TOTAL	5.314.104	4.174.257	1.139.847	100

Source: Dirección Nacional de Migración (2000 – 2006) INEC Anuario Migración 2005

Produced by: Coalición CTMF

According to this source, in 2006, 44.9% of registered entries were women¹³⁹, indicating a certain level of 'feminization' of migration. With regards to age, 43% were persons aged between 18 to 40 years, 39% were below the age of 18, and 18% were above the age of 40. With regards the reasons reported for travelling, 59.7% claimed the reason was tourism and 37.2% claimed other reasons. It must be noted that the record sheet of the migration control authorities does not include a category for those travelling for work purposes.¹⁴⁰

2.1.1.3 Census Registry

According to the *Dirección Nacional de Migración*, between January 2001 and December 2006, 153.574 people have registered with them nationwide, amongst which 41.6% have obtained immigrant or residence visas, 40.9% obtained non-immigrant or temporary visas and 17.5% obtained visas under the agreement between Colombia and Ecuador, the *Convenio Colombo Ecuatoriano* (CCE)¹⁴¹.

Amongst the residence visas, the highest registry percentage is the category of Protection (9VI), which represents 30% of the total number. The highest numbers of visas for non-immigrant status are those of: Missionaries / Voluntary Workers (12 VII) 11.7%; Work (12- VI) 9.1%; and Refugee Protection (12-IV) 7.5%

¹³⁹ According to the INEC Yearbook, the percentage of women entering the country has risen gradually from 40% in 2000 to 45% in 2005.

¹⁴⁰ The other reasons registered by the DNM are: residence (19.537), events (1857), study (636), business (3556), refugee protection (130), unknown (497).

¹⁴¹ These visas correspond to the agreements for regularisation which took place between Ecuador and Colombia in the 1990s.

CENSUS FOR THE MIGRANT CATEGORY

	Immigrants						Non Immigrants									CCE	TOTAL
	9 I	9 II	9 III	9 IV	9 V	9 VI	12 II	12 III	12 IV	12 V	12 VI	12 VII	12 VIII	12 IX			
2001	63	199	597	105	296	5147		4	196	465	1369	1967	465	635	4220	15728	
2002	92	298	569	456	322	6341		1	142	126	1764	2063	654	549	1236	14613	
2003	105	325	756	694	597	6351			1234	622	2052	2681	841	907	5125	22290	
2004	153	571	907	1239	933	10973		2	3379	944	3100	4538	1001	1353	6745	35838	
2005	225	890	1397	1676	1802	13080	9		4205	1924	3636	5537	3138	1534	7635	46688	
Abr-06	142	418	464	813	915	3952			2378	808	2011	2555	1232	788	1941	18417	
	780	2701	4690	4983	4865	45844	9	7	11534	4889	13932	19341	7331	5766	26902	153574	

Source: Dirección Nacional de Migración 2006

Produced by: Coalición CTMF

One must keep in mind that the total figures indicated in the census over the 6 years examined do not reflect the total number of foreigners present in the country, and that the census information was gathered on a yearly basis¹⁴². Therefore, the same person may have been counted in the registry more than once for the different years. Nevertheless, the variations in the registry per year, within the same migration category, indicate that from 2004 there has been an increase in the number of people counted in the census which, for example, in the case of protection is of 40%. This fact may correspond to the methods used by the State in order to control irregular migration, particularly that from Colombia, which obliged foreigners to seek alternative methods of regularization.

With regards the nationality of people who are included in the census, according to the census registers of 2006, the main nationalities registered are: Colombia (44.2%), USA (11.4%), Peru (4.7%), Cuba (3.2%), Chile 2.9% and China 2.8%. With regards the gender balance, according to research by FLACSO based upon the figures of the 2004 census, 47% of people counted in the census were women.¹⁴³

2.1.1.4 Registry of Residence Visas

According to data gathered by the *Dirección General de Extranjería* during 2006, Colombians were the highest number of people to register for a residence visa (1,450),

¹⁴² According to the Regulation of the Law dealing with Foreigners, the immigrants must be counted for census only once and the non-immigrants on an annual basis, nevertheless, until 2006, the DNM obliged an annual counting for census for both migration categories.

¹⁴³ FLACSO – MDMQ, Socio-Demographical Profiles and Dynamics of Migration in the Metropolitan District of Quito, Base Line, Document 1, August 2006.

followed by Cubans (350), Chinese (300) and Peruvians (290).¹⁴⁴ Colombians and Peruvians mainly applied due to protection reasons, Cubans mainly applied for professional visas and Chinese mainly applied for investors' visas.

2.1.1.5 People in transit

There is no consolidated data from the last few years on the movements of people in transit. However, according to INEC in 2005¹⁴⁵, 166.920 (19.4%) non-immigrant persons in transit have been registered, out of a total of 859.888 migratory movements. Out of these, 116.819 came from South America: 59.997 from Colombia and 43.241 from Peru.

There have been some cases detected of Colombian migrants who enter the country with the aim of applying for asylum in countries in the global North, or as a way to move on and migrate towards other countries of the global South. In 2005, a group of approximately 50 Colombians entered Ecuador and applied for asylum at the trade office of Canada in Quito. Without waiting for the negative decision of this office to accept this procedure, a few of these people opted to apply for a visa in Ecuador and the rest moved on towards Chile.

According to news in the press, it can be established that the country is being used as a route for irregular migration towards the USA, especially by Chinese and Peruvian nationals. Generally, these groups are helped to enter the country by human smugglers (from Ecuador or Peru), either via land or sea, to be embarked on ships together with the emigrating Ecuadorian population heading to Central America.

A study made on the Peruvian migration flows heading outwards between 1994 and 2003, established that since 2001 there has been a change in the patterns of these flows: whilst Ecuador saw a rise in the intensity of flows of Peruvians entering the country, the numbers decreased in the USA. This could reflect a change of route for irregular migrants. Some therefore hypothesise that due to the intensification of restrictions on migration by air-travel to the USA – which was the main destination between 1994 and 2001 - irregular migrants decided to change route, intensifying the travel by land to destinations such as Ecuador¹⁴⁶.

2.1.2 Characteristics of the main migratory flows

2.1.2.1 Colombian immigration

Migration from Colombia follows a pattern of closeness between the two countries which goes back a long time, but currently has intensified to become a routine process as a consequence of the effects of the implementation of Plan Colombia and the attraction of the dolarization of the Ecuadorian economy. For this reason, this flow can be considered

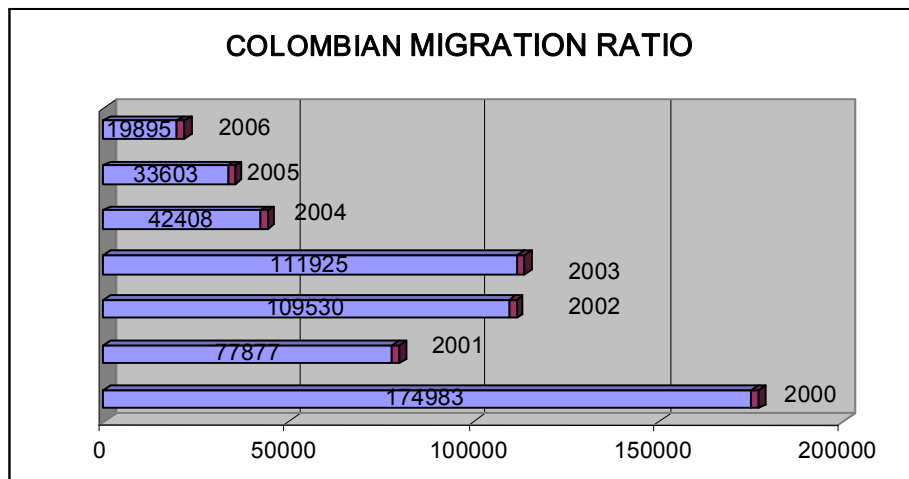
¹⁴⁴El Universo, "Ecuador: inmigración por la dolarización", 14-01-07, www.eluniverso.com/2007/01/14/0001/986/EEAE199014AA4542B9C73CBF21CEC6F2.aspx

¹⁴⁵ INEC, Ob cit., p. 159-160

¹⁴⁶ De los Ríos Juan Manuel and others, "Por qué migran los peruanos al exterior? Un estudio sobre los determinantes económicos y no económicos de los flujos de migración internacional de peruanos entre 1994 y 2003", CIUP, Preliminary Version, 1-03-05.

one of forced migration in the search of protection, and also an economical one, which renders it to difficult to distinguish between the motivations behind the two cases.

According to the Population and Housing Census, in 2001 there were 51.556 Colombian nationals, 24.305 men and 27.251 women. On the other hand, the registers of migratory movement established that between 2000 and 2006, 1.406.169 entries and 835.948 exits have been registered, generating a difference of 570.221 people - which represents 49% of the general migratory balance.



Source: DNM 2000 – 2006 - INEC Annual of International Migration 2005
Produced by: Coalición CTMF

The years in which there was the largest increase in the migration influx figures were 2000, 2002 and 2003, which are essential indications - if one takes into account the dynamics of the civil conflict in Colombia – of the beginning of the implementation of Plan Colombia; the hand over of the no-conflict zone of de San Vicente del Caguán; the establishing of the Patriot Plan which intensified military actions through the use of the *Fuerza de Tarea del Sur* in the departments of Guaviare, Meta, Caquetá and Putumayo on the border with Ecuador; and the breakdown of peace talks in February 2002¹⁴⁷.

Since 2004, there has been a sudden decrease in the migratory influx due to: the presentation of the judicial attempt, labour controls, the threat of entry visas, as well as indiscriminate detention and deportations.

According to FLASCO¹⁴⁸, there are 5 types of migration flows of Colombian nationals into Ecuador: 1. Forced migrants who have accessed the formal system of refugee status recognition - between January 2000 and December 2006 there were 13.523 persons in this category¹⁴⁹. 2. Persons of inter-ethnic and inter-cultural background, mainly indigenous groups and those of African descent who live along the border areas. 3.

¹⁴⁷ Rivera Fredy and others, *Contextualización del Refugio de Colombianos en Ecuador*, Press Version 2006, p. 34

¹⁴⁸ *Ibid*, pag. 17-18

¹⁴⁹ UNHCR - Ecuador, *Statistical Registry 2000-2006*. In this period they received a total of 44.385 asylum requests and only 30.5% were accepted.

People of Andean / *mestizo* background located in the departments of Nariño and the provinces of Carchi and Imbabura, who migrate on a temporary basis and to engage in informal commerce, as well as to follow the shared agro-economic cycle; 4. People who have chosen to live in Ecuador as residents, with a legal visa, aiming at developing business, work or cultural activities; and 5. An unspecified amount of people are in an irregular situation, amongst which one can find rejected asylum seekers, potential asylum seekers – most of whom are *campesinos* (people from rural areas) or poor people from Colombian urban areas who, for fear of the Ecuadorian authorities, reprisal from armed groups, or lack of knowledge of the asylum system, choose to remain 'invisible'. It must be noted that this division does not mean that there is no overlapping amongst the people who could fall under more than one category.

The existence and magnitude of the last category of migrants has been recognised by UNHCR, who estimate that there are around 250.000 people in need of protection and who would fall under their mandate¹⁵⁰, amongst whom only 14.7% have been able to access the asylum system. The other 85.3% (213.335 people) have not accessed the asylum system due to fear or lack of knowledge, remaining in the country without making themselves visible, intermingling with economic and irregular migrants.

On their part, civil society organisations have established that rejected asylum seekers and potential refugees who have not accessed the system and remain in the country irregularly, are people who are in a situation where they need refugee protection and find themselves in a "grey area": they are an unspecified group of immigrants of who have an unclear mixture of both economic and protection motivations for being in Ecuador. Their situation leaves them just outside the scope of the 1951 Refugee Convention and implies that in practice they cannot accede to the refugee protection system and technically they also fall outside the scope of the Migrant Worker Convention.¹⁵¹

With regards to the socio-economic characteristics of the Colombian population, a FLASCO study¹⁵² based on the 2001 census, established that the Ecuadorian provinces with the largest Colombian populations are Pichincha, Carchi, Guayas, Sucumbios, Esmeraldas and Ibarra. In Guayas and Pichincha there is the Colombian population with the highest levels of education in accordance with the fact that the poorer Colombian migrant populations live in the border areas.

In Ecuador, Colombian nationals tend to work in the sectors of agriculture, formal and mostly informal commerce, manufacture and domestic services. Work in the agricultural sector is predominant in the border areas and in Santo Domingo of the Colorados, whilst formal and informal activities are predominant in Pichincha and Guayas.¹⁵³

¹⁵⁰ UNHCR, Operación 2006, A PowerPoint presentation delivered to Civil Society organisations.

¹⁵¹ Groups of rejected asylum seekers refuse to accept other types of visas which are not for protection. They base their arguments on that their situation is of a refugee nature, and the implications that this fact will have on their possibility to access the system of reparation which exists in Colombia due to their status as people displaced by violence.

¹⁵² FLASCO – MDMQ, Obt. Cit, page 20 and 21

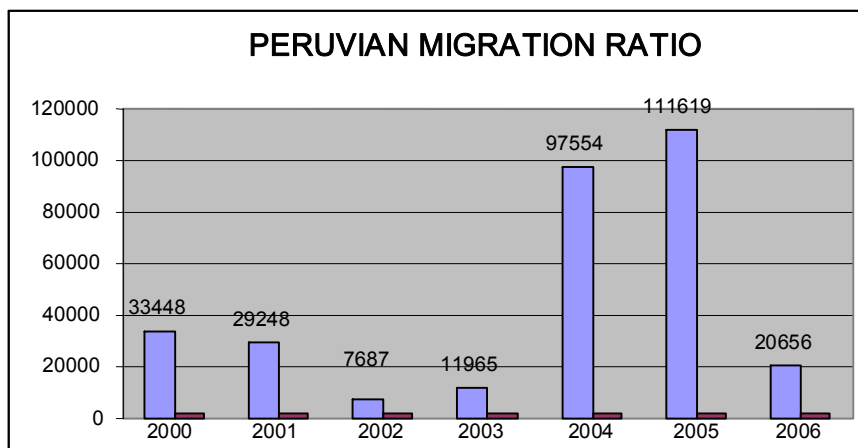
¹⁵³ Ibid

2.1.2.2 Peruvian Immigration

"The majority of us find ourselves in an irregular situation. Many of us come to find better opportunities and work since we cannot find work in our own country"¹⁵⁴

Immigration from Peru is also a process which occurs due to the vicinity between the two countries, and is affected by border conflicts, which are currently being solved; and mainly can be regarded as forced economic migration, affected by the poverty and social exclusion levels in the interior regions of Peru – nevertheless, there are also cases of forced migration.¹⁵⁵

According to the population census, until 2001 there were 5.682 Peruvians in Ecuador - 3.360 men and 2.322 women. On the other hand, between 2000 and 2006 there were 685.252 entrances and 373.075 exits registered, bringing about a balance of 312.177 people remaining in the country – 26% of the entire migration balance.



Source: DNM 2006 and INEC Migration Annual 2005
Produced by: Coalición CTMF

The migratory movement of this group of people has been fluctuating, nevertheless in the 2004-2005 period it has registered the largest migration influx. In 2006, there was a large drop in this influx, which might correspond to the changes in control methods used towards this group of people – especially the large number of deportations.

According to statistics from the Ministry of Foreign Affairs of Peru¹⁵⁶, in December 2004 there were an estimated 37.910 Peruvians in Ecuador, amongst whom 31.180 were in an irregular situation. Until 31 August 2005, the Peruvian Embassy in Quito established

¹⁵⁴ Testimony of a Peruvian national who lives in the province of El Oro, for 3 years living in an irregular situation. Interview given to JRS Ecuador, 07-07

¹⁵⁵ According to the Committee for Refugees of the Episcopal Conference of Ecuador, the Peruvian population who have applied for refugee status have put forward as reasons the reactivation of cells of armed groups, persecution by groups of delinquents, drug-trafficking, family and land problems.

¹⁵⁶ Sub secretary of Expatriate Peruvian Communities, www.rree.gob.pe/portal/mre.nsf/IndiceWebPortal?OpenForm

that the total number of Peruvians had increased by 5.000 people, mainly in an irregular situation.¹⁵⁷ 43.000 Peruvian nationals are formally registered in Ecuador.

According to the Peruvian authorities, migration towards Ecuador occurs due to: a lack of opportunities in the northern region of Peru, the attraction of the dolarisation of the Ecuadorian economy, the request for workers as a result of outward Ecuadorian migration – especially in the southern provinces; the preference of businessmen for cheap labour, the announcement by the Ecuadorian state of a work visa programme, and the presence of potential workers and fraudsters who misinform and exploit the population.¹⁵⁸

Although there are no official figures, there are between 60.000 and 120.000 Peruvian immigrants estimated to be living in Ecuador¹⁵⁹, the majority of whom are in an irregular situation, mainly living in the cities of Machala, Loja and Cuenca. Their presence fluctuates a lot due to the high cost of living in Ecuador, which makes them decide not to live in Ecuador on a permanent basis; and also due to the systematic persecution suffered by this population at the hands of the police authorities. However, according to institutions¹⁶⁰ working in the area, there is a constant increase of Peruvians who decide to settle with their families in Ecuador.

The Peruvian population mainly comes from the border areas with Ecuador, especially: Tumbes, Piura, Chiclayo, Trujillo, Amazonas, Lambayeque and Amazonas. And they tend to settle mainly in the provinces in the south of Ecuador: El Oro, Azuay and Loja. However, their presence is increasingly being detected in other provinces in the centre of Ecuador such as Guayas, Pichincha and Cotopaxi.

A big part of this population undertakes informal commercial activities (agricultural products and manufacturing), construction, cultivation of bananas, work in mines, and domestic services.

2.1.2.3 Chinese Immigration

According to Kou Zegang, the cultural officer of the Chinese Embassy, migration to Ecuador of Chinese nationals is mainly due to the dolarisation of the Ecuadorian economy, and not necessarily having as a source China itself, but other Latin American countries: "Many came from Argentina after the economic crisis, attracted by the dolarization".¹⁶¹

Nevertheless the number of this population is not significant and occurs through regular channels, under the category of foreign investors visas – however their presence is constantly increasing and is giving rise to reactions of rejection, exclusion and

¹⁵⁷ Ministry of Work, Work Labour Roundtable, "Regularización Migratoria de colombianos/as y peruanos/as: elementos para la Reflexión y la Toma de Decisiones", 27/06/06,

¹⁵⁸ Ibid.

¹⁵⁹ Jokisch Brad, Ecuador: Diversity in Migration, University of Ohio, www.migrationinformation.org/Profiles/display.cfm?id=591.

¹⁶⁰ Human Mobility of the Episcopal Conference of Ecuador, Project Cañar – Murcia, Association of Peruvians in Machala.

¹⁶¹ El Universo, "Ecuador: inmigración por la dolarización", art. Cit.

discrimination amongst the Ecuadorian population, due to the effect it is causing on the local commerce and national products.

According to the population census, until 2001 there were 1.214 Chinese nationals in the country, 724 men and 490 women. The migration movement between 2002 and 2006 indicates an approximate migration balance increase of 848. However, in 2005, there was the discovery of the illegal supply of over 3.000 foreign investor visas to Chinese nationals.¹⁶²

Chinese immigrants generally run family businesses such as clothes and shoe stores and restaurants, whilst others work in the petrol, information technology or cement industries. Their presence is spread across the country, but particularly in Quito, Guayaquil and Cuenca.

2.1.2.4 Work Immigration

According to the Ministry of Labor¹⁶³, between 2004 and 2006, 3.189 work permits were given to foreigners, of whom 1.654 (51.9%) were to Colombian workers, 260 (8,2%) to Peruvians, 232 (7.2%) to Brazilians, 209 (6.5%) to Argentineans, 96 (3%) to Spanish, 89 (2,8) to Chileans, and 1,5 % to Venezuelans, Cubans, Americans and Italians. Compared to the overall migration flow, this group only represents 0,27% of all immigrants.

The high percentage of work permits given to Colombians is a direct result of the regularisation process which started in 2004. The number given to Peruvians has increased in the last two years and seems to correspond to a process of flexibilization of requisites asked for by the Ministry of Labor. A number of people from these two groups get professional permits, but even non-qualified workers manage to get such a permit as a result of a work contract.

Generally, workers of other nationalities fall under the professional category with high skill levels. They are employed by petrol companies, industries and businesses where there is a need for management and monitoring. This is the profile of a worker required by law.

The presence of migrant workers from Spain and Italy can be associated with the outward Ecuadorian migration and the initiative of some professionals in these countries to set up work opportunities in Ecuador.

The labor authorities ask for the sum of 60,00 USD as a requisite for obtaining a work visa, generally valid for a year with the possibility of being extended to two years upon renewal. Once it is given, this work permit gives the right to obtain a workers' license -

¹⁶² The member of parliament Carlos González denounced the functioning of the network, which involved high level authorities of the state of Lucio Gutiérrez, to favour the handing out of foreign investors' visas to Chinese citizens, by falsifying documents and omitting the deposit of necessary guarantees, for each of these visas changing between 3.500 and 4.000 dollars. The case is under investigation. Ver El Comercio, 17-06-05, Unos 3000 chinos habrían ingresado ilegales al país.

¹⁶³ Ministry of Work, Directorate of Migration Labour, July 2007

however, according to staff from the Ministry for Work, not all workers pick up this document.

According to the Directorate of Foreign Affairs of the state ministry, in 2006, 350 resident visas were given to Cuban nationals, making them the third largest nationality with this type of visa. They generally enter the country on a temporary basis (on work or intercultural exchange visas), in virtue of bi-lateral agreements to work in various sectors in the fields of education, sports or healthcare or as guests to give lectures or speak at conferences, but afterwards decide to opt for residence, applying for protection or professional visas. Many can be therefore considered as migrant workers.

2.1.2.5 Fortification of the borders

According to what Fredy Rivera pointed out¹⁶⁴, the increased lack of security on the northern border of Ecuador due to the implementation of Plan Colombia and its effects, generated a mobilization of military resources and personnel to provide security to the Ecuadorian population¹⁶⁵, a situation which has weakened the human rights position of the people who have settled in the border areas. Actually, the issues of national and citizen security have intermingled with each other, to the point where there has been the necessity to set up "zones reserved for security" within the national territory where the military authorities have various controls over the civilian authorities and population. In fact, Decree N 2 published in the Official Secret Registry N 358-S, signed by the former president Gutiérrez, together with the former minister of Defence and the chief of the Command Group of the FFAA on 7 April 2003, and ratified by the current state, creates "areas of reserve" and restricts the movement of people and vehicles in the border villages in the north for reasons of security from the borderline till up to 20km inside the national territory¹⁶⁶.

This situation contributed to the process of discrimination and exclusion of the Colombian population, as well as bringing about abuses in the migration controls (there have been reports of raids and extortion committed by Ecuadorian military personnel against the undocumented Colombian population)¹⁶⁷ and a lowering of the respect of human rights standards of the foreign populations which have settled in the area or which have recently moved to the area.

¹⁶⁴ Rivera Fredy, Contextualización. Op. Cit, p. 32.

¹⁶⁵ The expenditure for Defence in Ecuador passed from 490 million dollars in 2002 to 690 million in 2003. El Comercio, pg. 6-A, 14-2-2003.

¹⁶⁶ The text of the decree establishes that the border areas and the reserved areas will be included in the War Plan of the armed forces and the joint command which, according to the law on national security, can propose the actualisation of data and geographical demarcation, maintain or change the status of temporary or permanent residents or regulate military restrictions imposed when the situations requires. As part of these actions, there is the plan to make a census for obtaining information on activities of people who live in the area.

¹⁶⁷ Herdoiza Cristina, Systemisation of Workshops on Human Rights, Puerto Nuevo, province of Sucumbíos, Project, Integration and Self-employment on the Colombia-Ecuador border, financed by Population Refugee and Migration - PRM with the technical assistance of FUPAD, implemented in Ecuador by Fundación Esquel.

Recommendations:

- **The State must establish an effective system for the collection statistical information which would allow a better characterisation of the migration flows and which will lead to a better public policy strategy.**
- **It is important to establish indicators with regards immigration, and to determine a centralized entity - which could be the INEC - to process the information and management of analysis of migration flows.**
- **It is necessary to establish a registry mechanism which will allow to identify migrant workers. It would be recommended to incorporate the reasons for entering and/or exiting the country in the migrant registry record, and details of the work.**
- **The state must implement specific mechanisms for the protection of the population who fall within the "grey areas" of categorization, recognizing the application of the CTMF in its national legislation. This would be important for the cases of rejected asylum seekers and potential refugees - ensuring to understand the conditions of these people and their reasons mentioned for staying in Ecuador.**
- **The state needs to establish effective and accessible procedures of regularization which allow the irregular population to incorporate and integrate effectively into the country.**
- **Since formal work-related migration represents only 0,27% of the total migration figures, it is important to establish an open labor policy which can facilitate the obtaining of work visas and permits for non-qualified workers.**
- **The state must initiate processes which would give visibility to the conditions in which migrant workers of various nationalities find themselves in.**
- **The state needs to implement a management policy for the borders in which the issues of security and human rights are kept separate from each other and which guarantees the respect of humanitarian principles.**
- **The state needs to provide a concrete role to bi-national development entities which were created by means of formal agreements, and establish the rest of the security records and mutual confidence which were agreed upon.**
- **The Ecuadorian state must avoid the politicization and media sensationalist ion of the border situation, to avoid the consequence of a potential stigmatization of the population who live in this area. Moreover, it must investigate and sanction all abuses and human rights violations committed. It must also include the effective participation of local state and civil border authorities in policies of prevention.**
- **The Ecuadorian state needs to encourage the international community to take an urgent stand towards the Colombian state, in order to generate processes of co-responsibility for the effects of the internal conflict, financial liability for costs generated by the effects of this conflict, render transparent the procedures based on bilateral agreements, and provide a concrete role to bi-national development agencies created by such agreements.**

2.2 IRREGULAR MIGRATION

Estimates based on the migration balance established that approximately 500.000 Colombian nationals¹⁶⁸ and about 300.000 Peruvians could be living in the country in an irregular manner. The bulk of this population is formed by people who enter the country with an Andean pass¹⁶⁹ and, given their precarious economic situation, did not manage to obtain a visa. Other irregular groups include rejected asylum seekers who chose to stay in Ecuador, and potential Colombian refugees who, due to fear or lack of knowledge, do not access the asylum system.

Due to the increase of irregular immigrants in the country, the state has implemented a series of policies which have as an aim to control the flows and act as deterrents. The application of these policies and their management as portrayed in the media has contributed to: the criminalization of irregularity; the violation of the human rights of the irregular immigrant population through labor exploitation, social exclusion and repression by the authorities and the rest of the population in general; and to the non-visibility of solutions which would guarantee the respect of human rights.

2.2.1 Processes for Regularization (Art. 69 CMWF and Question 30)

"Without papers we can have access to nothing, and we are worth nothing."¹⁷⁰

Within recent years, the State has set up three processes for workers' regularization (April to December 2004; December 2004 to February 2005; and December 2006 until October 2007)¹⁷¹, offering 4000 visas to Peruvian workers¹⁷² and accepting 232; it periodically increased the cost of residence visas¹⁷³; and has suggested the possibility of a widespread process of regularization for 500.000 Colombian nationals, which to date has not yet been specified.

The State has opted for a policy of labor regularization. However, the results of the proposed processes, with around only 1000 persons regularized as a result of the initial processes, and the perspectives which already exist from the regularization process for Peruvians, will probably arrive to a similar number of the previous efforts and not to the predicted number of 6000 workers¹⁷⁴. This indicates that this type of regularization process is not responding to the magnitude and needs of the population who find themselves in an irregular position in Ecuador.

¹⁶⁸ The State Minister and current President of the Republic highlighted this figure in February 2005, when declaring that they will commence a process of regularisation.

¹⁶⁹ Tourist visa, adopted at an Andean Nations Community level, which guarantees the entrance of co-nationals in the region, with the only requirement of presenting this identity card; it allows a stay of 180 days and expressly prohibits the right to work.

¹⁷⁰ Herdoiza Cristina, *Sistematización Talleres Derechos Humanos*, Section 5, Ob. Cit.

¹⁷¹ The first between April and December 2004 for foreigners in general; the second between November 2004 and February 2005 for Colombian workers; and the third from December 2006 till May 2007, which was reformed and has been extended to October 2007, for Peruvian workers

¹⁷² Offer made by the former president Lucío Gutiérrez, in March 2004, but never took place.

¹⁷³ These values have increased since the year 2000: 2000 (USD200); 2003 (USD270); 2005 (350). To which must be added the costs for the work and representation of a lawyer.

¹⁷⁴ According to information given at the Episcopal Conference of Ecuador by the Peruvian border consulates, not more than 460 files were presented during the normal process and about 200 are still to be presented.

In fact, this conforms to what has been pointed out with regards the characterization of the principle flows: the irregular migrant population in Ecuador is integrated into the informal sector of the economy. Therefore, the regularization through the formal labor route does not constitute an adequate alternative for this reality.

These facts indicate that, when planning the regularization policies, the State is adopting conceptions of selectivity and restriction. In practice, what seems to be the aim is the regularization on a temporary basis to a limited group of foreigners which would be functional to the interest of the security and economy of the State. With respect to the rest, they would attempt to limit their entry or facilitate their exit from the country. Only in this context can it be understood that, parallel with the amount of regularisations, the costs will also go up and the requisites to obtain a resident permit will also go up. A clean criminal record will be necessary for the entrance of Colombians and there will be the implementation of systematic processes of detention and deportation of irregular foreigners.

This process of selectivity can be also seen in the regularization process currently taking place, which since its beginning, has shown the following limitations: Very little geographical coverage, since it only covers the border provinces - ignoring the fact that there are also Peruvian nationals in the interior of the country. It is restricted to three work activities: agriculture, construction and domestic services. It requires conditions such as a clean criminal record certificate from the country of origin and a legal work contract in which there is a record of the time of stay prior to the date in which the process began, leaving in the hands of the employers themselves to give these documents. There is also the problem of the short length of time of the validity of the visa (1 year).¹⁷⁵

To these issues are added other practical problems such as¹⁷⁶: A lack of support from some local authorities, especially the Migration Police, Judicial Police and the Ministry of Work; the creation of additional needs for the legalization of work contracts; the incorporation of a deadline for trial period of 90 days; there is a lack of sensitization aim at the employers; the absence of an information campaign aimed at orienting the beneficiary population and the community in general. This led to result that one of the achievements of the Agreement, the introduction of mechanisms to guarantee the non-deportation of the population, has not been fully implemented.¹⁷⁷

In the month of May, in the process of the regularization of their work visas, 14 Peruvian nationals were arrested in Huaquillas – they were there to pick up their passports and criminal record certificates.¹⁷⁸

¹⁷⁵ In May 2007 there was an increase in the deadline for the presentation of documents until October 2007 and the duration of the visa until December 2008.

¹⁷⁶ This data corresponds to an evaluation made by the Department of Human Mobility of the Episcopal Conference of Ecuador in July 2007.

¹⁷⁷ Data facilitated the Department of Human Mobility of the Episcopal Conference of Ecuador.

¹⁷⁸ Municipality of Cañar, Project Cañar – Murcia, May 2007, Answer to a Coalition Questionnaire.

According to the opinion of civil society organizations, this process is further highlighting the necessity of a temporary work visa, and the necessity of options for resident visas, and especially protection visas.¹⁷⁹

Finally, it is important to point out that the absence of a strong process of documentation in the country leads to a limit of the exercise of one's rights.

Not being able to count of one's documents limits a person's access to basic services, puts his or her life at risk and marginates the person from society. Remaining undocumented puts persons at risk, they are not considered as citizens who are subject to rights, they are given no support and can be deported. They cannot register their children, they cannot participate in organisations and, since they are not legally present in the country, they cannot have a management role nor can they have the possibility of owning land.¹⁸⁰

Recommendations:

The State must establish a policy for regularisation which is permanent, accessible, effective and which is based on human rights principles and not national security or selectivity principles - for which it is important to take into account the following aspects:

1. The real conditions and necessities in which the irregular population in the country find themselves in: habitual work and ties of family and other relationships which are created.
2. Period of permanency, intention and necessity for temporary residency or stay.
3. The elimination or reduction of visa costs, especially for work and protection visas.
4. Awareness and orientation campaigns aimed at the general population on the positive effects which regularisation can have on the national economy and for the effective integration of the migrant population.
5. The promotion of roundtables for dialogue and reaching agreements between the business and informal sectors of the economy, the local states, the organs of the central state, civil society organisations and organisations formed by migrants themselves, for reaching agreements for minimum standards for the regularisation process.
6. Effective coordination between the different relevant state agencies, regulating and limiting the role of the organs of police control.
7. Opening up to and discussing the proposals for regularisation put forward by civil society.

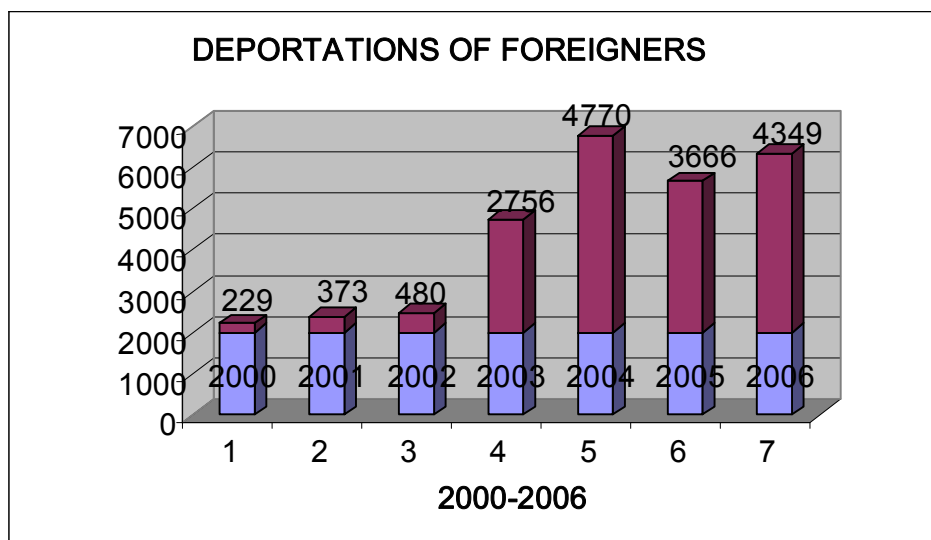
¹⁷⁹ The offices of human mobility of the Episcopal Conference, who work on the border and in the project of Cañar Murcia de Cañar, highlighted that they are increasingly coming across more and more people from Peru who have Ecuadorian children or who cohabit with an Ecuadorian partner and who wish to apply for a protection visa but cannot due to the high costs involved.

¹⁸⁰ Herdoiza, ob. Cit, sistematización Talleres Section 5 Lorenzó and Santa Bárbara.

2.2.2 Deportations and Exclusions (Art. 22 and 23 – 56; Question 12)

The deportation is done directly, by a written police order directed to the Intendency and from this order they enforce the deportation, without the presence of a lawyer or a consultant, or worse still a translator¹⁸¹

Between January 2000 and December 2006, there were 16.623 deportations of foreigners. 93.5% of the deportations took place between 2003 and 2006 and are linked to the establishing of a policy of control and restriction on flows of migration of foreigners, in particular towards the Colombian and Peruvian population.



Source: Dirección Nacional de Migración, 2000-2006
Produced by: Coalición CTMF

Although there is no storage of data divided by nationality for the entire period, between January 2005 and August 2006, 82% of deportations were effected against Colombian and Peruvian nationals; between 2003 and 2004 they were mainly aimed against Colombian nationals and, from 2005 onwards, they were focused against Peruvian nationals. Therefore we have a situation where between January 2005 and August 2006, 60.5% of deportations were effected against Peruvian nationals. This can be explained as part of the restrictive policy against this group which was a result of an increase in their influx into the country in these years.

The main problem which we face is deportation. We have no freedom to work, or to live here, because practically Peruvian nationals feel the need to remain with a very low profile out of fear that he or she will be captured and deported. Those who mainly violate our rights in this regard are the migration police who are those who mainly arrest Peruvian nationals in order to deport them. Around 200 Peruvian nationals are deported every month.¹⁸²

¹⁸¹ Border Pastoral of Tulcán, answer to a Coalition Questionnaire, May 2007.

¹⁸² Testimony of Carlos Valdez, manager of the organisation CIPESM of Machala – El Oro, 07-07.

The implementation of this policy of deportations is based upon a legal framework which brings about a vulnerability of the rights of foreigners. There is no guarantee of the independence of the authorities which deal with recognizing and implementing deportations (Police Intendent), who are both judges and interested parties to the case, which breaches the concept of fair trial. There is also a lack of definition of the type of action: therefore it is not possible to determine if the action is a penal or administrative action¹⁸³. There are limits to the right of challenging a decision, even if this is a judicial right, since there is no clarity about the type of action and nor of the need to challenge the decision.¹⁸⁴ Automatic deportation is applied also to foreigners accompanying or related to a deported person, which violates the principle of presumption of innocence and the right to legal defense. Rights are also violated during the practice of immediate deportation of foreigners sentenced for petty crimes, once they have completed their sentence; which does not allow rehabilitation, social reintegration and family unity in the case of foreign detainees who have established family roots in Ecuador.

Moreover, during the proceedings there is a breach of the following basic norms of fair trial:

- No judgment within a reasonable timeframe: the deprivation of liberty can extend to periods of between 8 and 15 days, when legally they should be released within 96 hours.¹⁸⁵
- No guarantee of an effective legal defense: very few people can count upon the possibility of an effective defense; the legal aid lawyers provided by the state do not attend the hearings.¹⁸⁶
- No guarantee of the right for consular representation: this right is not provided for in the law, though some police officers claim to call upon consular representatives to attend hearings, but in only very few cases do they turn up.¹⁸⁷
- No protection of workers' rights: Some employers attempt to avoid paying their employees by encouraging deportation. The police officers order the deportation without attempting to protect the payment of workers before they are deported.

The Peruvian national works his / her one or two weeks, and the very same landowner who has employed him / her calls the Migration Police in order to avoid

¹⁸³ The original law establishes that a deportation is a penal action, the actual codification has eliminated the word 'penal', without signalling with clarity the Source of this codification and without altering the essence of the procedure which has been adjusted according to a prosecutorial and penal concept.

¹⁸⁴ Until before the last codification, it was signalled that when faced by a deportation decision there is no right to challenge the decision; in actual fact, there is the possibility for a judicial challenge but it is not clear before which judicial authority this challenge can take place: penal or administrative. The codification introduced the possibility of a judicial challenge, accepting a decision of the Constitutional Tribunal, Resolution 12, R.O. 119 of 1st February 1993; Nevertheless, this decision was revoked by the Constitutional Hall of the Supreme Court of Justice. In this way, even if it is codified it may be declared unconstitutional.

¹⁸⁵ The procedure can be prolonged if added to the deportation procedure there is also an order to pay a fine or if the person does not have enough money to pay for the passage back to his country of origin.

¹⁸⁶ Their signature does not appear in any of the acts of the hearings.

¹⁸⁷ According to information of the Intendency of Pichincha, the Peruvian Consulate in Quito is one of those who most frequently attends the hearings, but does not attend all of them.

payment of wages by getting the employee deported. The police await the employer outside the plantation grounds and departs them.¹⁸⁸

- **Limits of the right of challenging a decision:** this right is recognised but neither the population nor the authorities know of this alternative¹⁸⁹, generally the police officers order that the deportation is effected immediately.

An asylum seeker denied the right to stay in the country, and who was in an irregular situation for more than 3 years, was detained while he was selling flowers in the street. The Police Intendent of Pichincha ordered his deportation. This decision was challenged because the foreigner had a *de facto* relationship with an Ecuadorian woman and was the father of an Ecuadorian child and another child which was soon to be born. (the principle of family unity). The Police Intendent accepted the argument put forward but failed to communicate to the Migration Police that the deportation order had been suspended. The Migration Police therefore effected the deportation anyway. The judge who was presented with the case refused the plea, considering the Police Intendent's actions as legal, having proved the irregularity. After this decision, the deported person tried to enter the country again, but the migration authorities warned him that he would be detained and tried for migration crimes.¹⁹⁰

- **Violation of the right to non-return:** especially of forcibly displaced people. The police officers automatically order the deportation back to their country of origin without living them the opportunity to express whether they wish to return to that country or not.
- **Mass or collective deportations.** Many derogations follow collective detention or "searches" effected by the migration police, who report everyone together on collective warrants. The Police Intendent holds meetings with the whole group and tries to get to know the situation of each person, which is limited to looking at the documents which are available. Afterwards, a decision is made for the group indicating the names of those who will be deported and those who will not be deported – without giving any reasons for these decisions. In general, the execution of the deportations also takes place towards the group. These acts highlight a constant practice of mass deportations which clearly violate the norms of the Convention and the general standards of human rights

With respect to the mass nature of the deportations and the way in which they respond to a policy of restriction and State control, justified by a protection argument, we must note the following:

Ecuador, a serious case: Ecuador is increasingly adopting a more closed approach towards migration everyday that passes: Peruvians and Colombians are facing mass and indiscriminate repatriation ... Fernando Gavilanes, director of Migration Strategy assured that the migration office receives approximately between nine and ten refugee applications from Colombian nationals who wish to enter the country on a protection

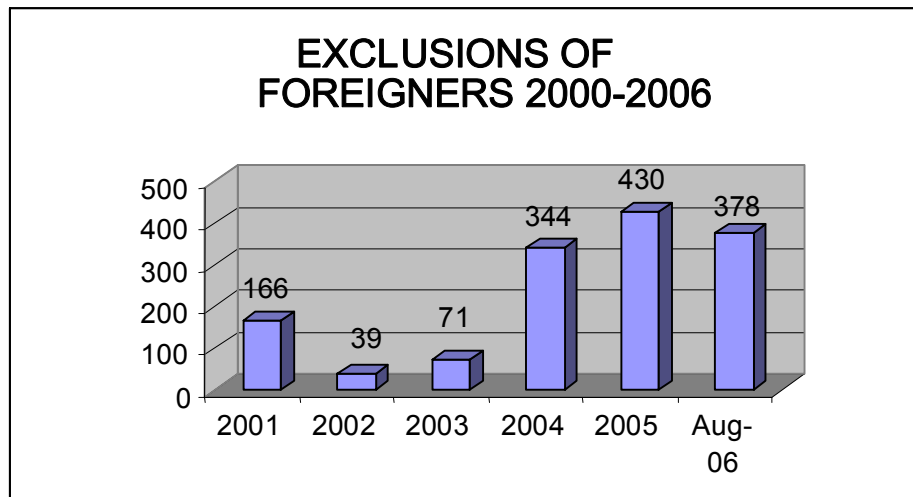
¹⁸⁸ Testimony of Carlos Valdez is quoted.

¹⁸⁹ The level of ignorance is such that a report of the State itself highlights that the law does not cater this right, which brought about its introduction in the latest codification.

¹⁹⁰ Case INREDH, 01-05: Dossier Num. 16.749.523 Police Intendency of Pichincha. Judgement Num. 51-2006 Judge Décimo Quinto of the Criminal Court of Pichincha.

visa. And he added that the measures adopted do not aim at prohibiting the entrance of Colombians into the country, but to protect their integrity by ensuring that they do not get exploited by employers without scruples.¹⁹¹

In relation to exclusions between January 2001 and August 2006, 1.428 persons have been excluded, 80.5% took place between 2004 and 2006. This fact equally indicates the implementation of restrictive policies, amongst which are the judicial decisions and deportations, since deportation constitutes a cause for the exclusion from entrance into the country.



Source: Dirección Nacional de Migración, 2001-2006
Produced by: Coalición CTMF

The Migration Law provides for a series of reasons for exclusion, amongst which are some reasons which are discriminatory and against the interests of groups of vulnerable people who deserve to be afforded protection such a people with serious, chronic and contagious illnesses, who suffer from acute psychosis and the disabled (Art. 9VII-9VIII)¹⁹². Moreover, having been deported in the past is another cause for exclusion, something which is questionable due to the violations of due process which take place during these deportations.

It is also important to take into account that the reasons for exclusion are not only limited to entrance into the country but also to the right to stay in the country, since according to the law they are the reasons for deportation (Art. 19.II). In fact, under this concept it is encouraged to deport undocumented migrants or those persons who enter the country on an Andean card which has now expired or those found working with this card¹⁹³.

¹⁹¹ CRE (Ecuador), El Mercurio (Ecuador), Perú.21 (Perú), 21-09-05, <http://www.migrantesenlinea.org/enlinea.php?c=656>

¹⁹² The codification of the law, made by the National Congress, eliminated the numbers IX, X, XI, XII y XIII but did not mention the sources of this codification.

¹⁹³ The Andean card is a tourist visa and expressly prohibits the right to work.

But the main problem with exclusions is the discretion which the law gives to police authorities to make their decisions and the lack of a mechanism for challenging and reversing these decisions¹⁹⁴.

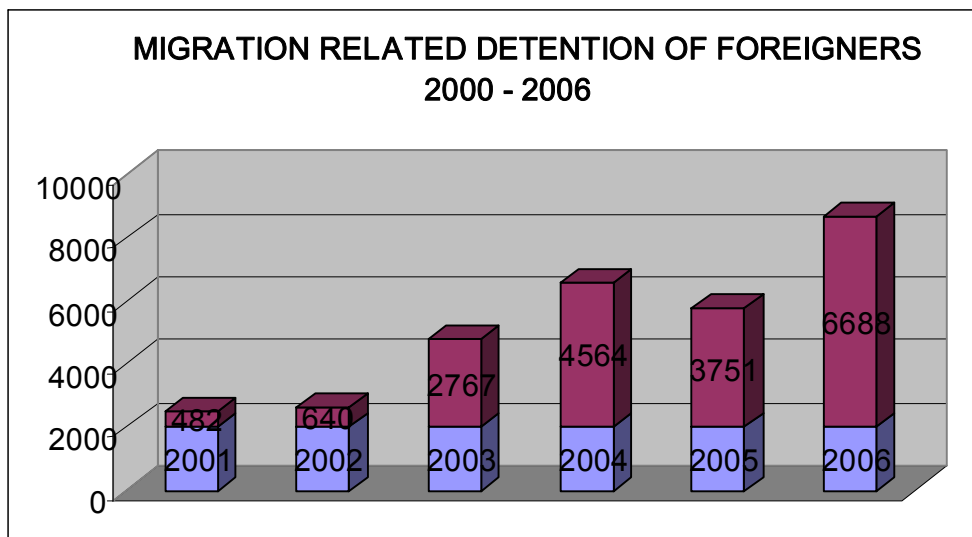
Recommendations:

- **The State must establish a normative framework which regulates the processes of exclusion and deportation, adjusted according to international human rights standards, in particular those provided for in Art. 22 and 23 of the CTMF.**
- **For this there is need to reform the Migration Law and its regulations, and determine clearly which are the reasons for exclusion and deportation, to define the judicial nature of the action, that the procedure takes place within a reasonable deadline and that there is a guarantee for the exercise of the right to challenge the decision.**
- **There is also a need to expressly guarantee the right to consular representation, prohibit collective deportation, guarantee the respect of the right to non-return, and recognize the right to a timeframe which would allow a migrant worker to solve his/her work-related complaints.**

2.2.3 Migration Detention (Arts. 10, 16 and 17; Questions 5, 13 y 17)

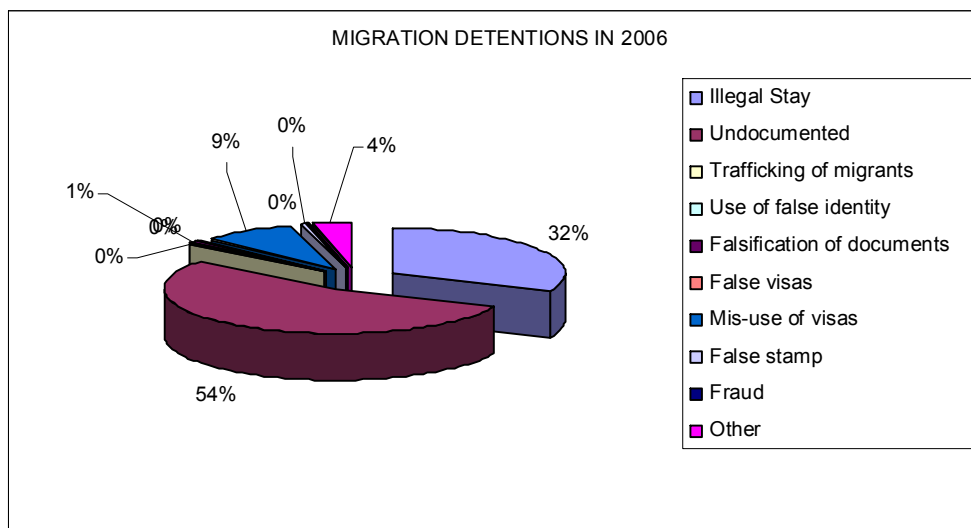
Between 2001 and 2006, 18.892 people were detained, 94% (17.770) occurred between 2003 and 2006. Although there are no statistical records according to nationality for this period, the majority of these people are Colombians and Peruvians. Between January 2005 and August 2006, 2431 Colombian nationals and 3724 Peruvians were detained, a fact which corresponds with the increase in deportations of Peruvians which has already been indicated.

¹⁹⁴ The main motives registered by DNM in 2004 for exclusions are: absence of necessary documentation, non fulfilment of the requisites, being without visa and previous deportation (DNM 2004)



Source: Dirección Nacional de Migración 2000-2006
Produced by: Coalición CTMF

According to the statistics of 2006, the main reasons for detention were “illegal stay, a lack of documents and mis-use of visa”. This last reason is generally applied to people found working with an Andean card.



Source: Dirección Nacional de Migración, 2006.
Produced by: Coalición CTMF

The three reasons mentioned constitute 94.6% of the total of reasons for migration detention. And according to the law they also constitute clauses for exclusion and can lead to the commencement of deportation proceedings. Nevertheless, if we compare this with the number of deportations which took place in 2006 (6323 detentions vs. 4349 deportations) we can establish that not all cases led to an eventual deportation and, therefore, some cases must have been classified as migratory contraventions punished with a fine. This indicates the discretionary nature which Police Intendents use when making decisions. And according to organizations which provide legal assistance, this

also shows the high level of corruption which exists, for generally this type of sanction is avoided through paying bribes to civil servants.¹⁹⁵

Regarding detention for crimes, according to statistics compiled by DNM, the main causes are falsification of documents, use of false identity, having a false stamp, and fraud. There are also cases of trafficking of migrants.

The procedures for detention for migration infractions, similar to those for deportations, occur without respecting the following basic guarantees for a fair trial:

- The absence of tipification of migration contraventions against the principles of legality and the restrictive character of the penal sanctions¹⁹⁶.
- Too much discretion and a lack of proportionality of fines for migration-related crimes and infractions fixed without corresponding to the penal legislation in force and against the principle of legality and equality. The last codification of the Migration Law introduced fines of between 400 and 4000 USD for migration crimes and fines of between 200 and 2000 USD for contraventions, these values not corresponding with the conversion effected legally for crimes and contraventions under the Penal Code. The current Penal Code establishes that the sanction is between 14 and 28 USD (Art. 607 C.P.).
- Deprivation of liberty in detention centers for petty crimes. As the State itself recognized, in some parts of the country there are no specialized centers for migration detention, which means that migrants in those areas are detained and intermingle with ordinary criminals. Border towns such as Tulcán, Esmeraldas and Sucumbíos have no migration detention centers and migrants are detained in normal prison facilities, with high levels of overcrowding¹⁹⁷. Some migration detention centers are set up in an *ad hoc* manner, with high levels of overcrowding, especially when there are the so-called "searches". The visiting hours are limited (2 hours per day) and in some cases the lawyers are submitted to this restriction too.
- Criminalization for administrative infractions: consideration as a migration crime of the entrance into the country of excluded or deported people who have not obtained the authorization of the Consultative Council of the Migration Police.
- Discretion for the determination of the existence of an alleged infraction. The national police are given the power to perform interrogations, inspections of documents and personal possessions and also arrests for alleged migration infractions. This leads to arrests which do not respect procedural guarantees and which can lead to abuse and corruption. Many irregular migrants report being victims of constant extortions and blackmail by police officers, who migrants ask for sums between 5 and 100 USD not to detain them. In cases where a person

¹⁹⁵ Legal department of JRS and INREDH

¹⁹⁶ Art. 38: "...The person whose action or omissions violate the obligations, duties or responsibilities imposed by the law and regulations of foreign affairs or migration, in a way which does not constitute a crime or which these laws do not sanction with any other type of punishment".

¹⁹⁷ Reports of the Migration Pastoral of Tulcán, Movilidad Humana Esmeraldas, JRS Sucumbíos.

cannot find such a sum, they proceed to deprive him of his liberty and if they have come across the person working in a public space then they confiscate his merchandise and do not register it in the police arrest records. Moreover, they also take away the personal belongings they have on them at the time such as their watch, mobile phone, money, etc. which also are not written down in the arrest records.

As proof of the level of discretionally and the human rights violations which these lead to, we present the following cases:

Corruption:

We register an average of 5 cases per day of extortion on the part of migration police who charge the value of up to 60 dollars for issuing the Andean card (which should be free), and up to 100 dollars for the renewal of registration and Andean card in the case of expiry. Moreover, abuses by police officers in the streets when they come across undocumented people, blackmailing them to pay between 10 and 50 dollars in order to leave them transit freely. It has not been possible to set up judicial mechanisms to fight such abuses because people are afraid to report such situation due to fear of reprisal, not wishing to cause themselves further problems in a country which is not theirs.¹⁹⁸

Arbitrary Detention:

Three Colombians were detained by the national police for having participated in a fight. They were placed under the orders of a judge of criminal law, who after 6 days ordered them to be set free. At the moment of executing this decision with regards their freedom, the Chief of the local police of Pichincha, placed them under the authority of the Migration Police, with a written document in which it was said: "with the aim of avoiding that people of other nationalities perform actions which are against the law to the prejudice of Ecuadorian nationals, we are will be grateful to you, if it is possible, to begin the procedure of deportation...". Based on this part, they began with the procedures for deportation before the Intendent of Pichincha, who decided not to deport them taking into account their status as refugees and asylum seekers. This resolution came up in consultation with the State Ministry, who confirmed the decision and ordered their release, which took place on January 16. As a result of these events, these people were detained for 15 days in an illegal and arbitrary manner.¹⁹⁹

Arbitrary detention, cruel inhuman and degrading treatment and torture:

A Colombian couple went out of the Land Terminal of Quito and had a discussion about a person issue. Two national police officers went next to them and asked for their documents, and since they had none they arrested them, threatening to report them to the Migration authorities to have them deported. One of the two police offers took the Colombian man to a room, whilst the other police officer took the woman for a short walk and, under the threat of detention, he took her to a room where there were beds and he abused her there. He told her that if she reported what had happened, he would kill her husband. The other police officer told the husband that his wife had abandoned him.

¹⁹⁸ Border Pastoral of the Dioceses of Tulcán, Answer to a Coalition questionnaire, May 07.

¹⁹⁹ Case of INREDH, January 2006: Dossier Num. 005-2006 Intendency General of Police of Pichincha

After this occurred, they let them free handing over 10 dollars in exchange for not requesting their documents.²⁰⁰

A very large number of police officers without a judicial warrant broke into the house of a Colombian woman, a single mother of 3 children – one of which a newborn baby, at the request of the sister of a police officer. They threw teargas which affected the newborn child and she was arrested and detained with all her children. They slapped her because she did not hand over her documents fearing that they would take away her visa and would deport her. She spent two days in detention without knowing the motive of her detention. She was released at the request of her neighbors from the same sector who raised a lot of pressure to defend her, and also with the assistance of the Social Apostolate.²⁰¹

Criminalization of the right to work:

Two Colombian nationals who were selling spectacles in the sector of El Camal were intercepted by the Metropolitan Police, who confiscated the merchandise (171 spectacles) without living them a receipt, though afterwards thanks to the actions of the CEDHU this merchandise was returned.²⁰²

9 Colombian nationals were detained by the Migration Police in different parts of the city, accused of bad use their visas by working illegally. The treatment towards these detainees was degrading, when they were transferred to the habeas corpus court hearing they were tied up to each other in a way in which impeded them from walking. During the deportation hearing, the prosecutor refrained from accusing them and the Police Intendent ordered their release²⁰³.

Recommendations:

- **The State must avoid a process of criminalization of the foreign population, particularly migrant workers. Work must be seen as a right not as a violation of the law.**
- **The State needs to adjust the migrant detention system to conform with the standards set up by the Convention and other human rights instruments.**
- **There needs to be a reform of the system of pecuniary sanctions for migration crimes and contraventions, to bring them in line with those for Ecuadorian nationals so as to avoid discrimination.**
- **There is the need to establish corresponding administrative methods to communicate with specific migration detention centers, which are different from those for people sentenced for ordinary crimes. Those in migration detention centers need to be guaranteed their right to acceptable conditions and treatment, access to visitors, consular representation, legal assistance and the respect of all other rights of the detainees as established under international standards of human rights**

²⁰⁰ Case of CEDHU, November 2003, Arbitrary Detention, sexual abuse.

²⁰¹ Movilidad Humana Esmeraldas, Answer to a Coalition Questionnaire, 15-05-06.

²⁰² Case of CEDHU, September 2003, Arbitrary detention, decomiso de mercadería

²⁰³ Case of CEDHU, April 2003, Arbitrary Detention, cruel, inhuman and degrading treatment.

2.2.4 Arrests for common crimes (Art. 9, 10, 16, 17, 18; Questions 17 and 22 of the Committee)

These Colombians are not like the ones before... we have to be careful now, because they have invaded us... it is criminals that came now, and we have to be tough"²⁰⁴

In December 2005²⁰⁵, 12.790 people were detained in the 36 centres for social rehabilitation in the country. 58.5% sentenced and 41.5% prosecuted. The capacity of the centres did not cover but 40,78% of the total prison population²⁰⁶.

Of the total number of detainees, 1.726 (13.5%) were foreigners, 293 (17%) female and 1433 (83%) male. Regarding nationality, 889 (51.5%) Colombians, 134 (7.7%) Peruvians, 58 (3.3%) Mexicans, and the rest were distributed among citizens of more than 30 countries, in particular, Spain, EEUU, Chile, Africa, Venezuela with an average of 15-40 detainees.

It must be underlined that according to the reports, not yet totally systematised in June 2007, the total number of detainees had increased to 18.195, of which, 62.9% had been prosecuted²⁰⁷ and 1.862 were foreigners.²⁰⁸

The highest concentration of Colombian detained population is found in the centers of Quito (398), Tulcán (209)²⁰⁹, Guayaquil (71), Esmeraldas (24) and Tena (18); and of the Peruvian population in Machala (30), Guayaquil (25), Azogues (18) and Loja (16).

According to a study by FLACSO²¹⁰, the foreign population is mostly prosecuted for drug crimes; in women, the rate is almost of 100% (most of them used as drug carriers) and in men of 85%. Crimes against property are next in importance.

The arrest and criminal prosecution of foreign people is carried out in the frame of a state discourse, encouraged by the media, that leads to link the increase in criminality and insecurity in the country, with the massive arrival of Colombians and of Peruvians in the last years.²¹¹

²⁰⁴ Rivera Freddy and others, Miedos, Representaciones Discursivas. Los Colombianos en Ecuador, in the press, Interview in Ibarra, March 2006.

²⁰⁵ Data provided by the Planification Agency of the National Agency for Social Rehabilitation, march 2007, stating that these are the latest fully systematised data, in response to the information request made by the Coalition.

²⁰⁶ DNRS, 2005 year data. Due to the increase of detainees registered in 2007, 5405 detainees, this index is much higher today.

²⁰⁷ DNRS, Table of total detainees, prosecuted and sentenced, based on a compilation of data from September 2006 to June 2007.

²⁰⁸ El Comercio of 28-07-07, "40 millones de dólares asignados para la emergencia carcelaria", mentioning the DNRS as source.

²⁰⁹ This centre has the highest concentration of foreign population at national level, taken into consideration the total prison population of the said centre.

²¹⁰ Nuñez Jorge and others, Una lectura cuantitativa del sistema carcelario ecuatoriano, 2004.

²¹¹ This perception has no base if we take into consideration the low percentage of foreigners within the prison population and if we take into consideration the data of INREDH stating that between January 2000 and March 2004, of a total of 127.627 people in detention, 1.56% were Colombians. INREDH, El Refugio en Ecuador, page 52.

Under the stigma of a increasing dangerousness, the police authorities carry out arbitrary detentions, torture and ill-treatment against foreigners; judges and public prosecutors establish a differentiated and more rigorous treatment for their judgment²¹² and the mechanisms to guarantee an effective defense system are limited, as very few lawyers want to take the cases, and doing that requires higher costs than those of nationals; in addition the public defense, despite the existence of some projects that have been executed, does not reach to cover the demand of the prison population and particularly the foreign one.

One Ecuadorian and three Colombians were detained by GAO elements, tortured and placed in solitary confinement, accused of being members of a gang. The torture endured by the detainees included beatings with sticks, application of tear gas in nose and mouth, and drowning in toilet. The presumed head of the gang, a Colombian who was tortured the most, shows rashes in his skin, bruises and oedemas in different parts of the body, caused by the traumatic action of a blunt object. The other detainees also have equimiotic signs.²¹³

According to a study about justice in Ecuador, more than 45% of the users and lawyers consider that only in a few cases: criminal justice is administered according to the Constitution and law; judges act free of prejudices and criminal justice is not for free.²¹⁴

The situation in prisons has not been a priority for the Ecuadorian state, there is a lack of state policies in this matter and there is a clear non-fulfilment of the rules of the constitution, law and international obligations of the Ecuadorian state; particularly regarding the Minimum Rules for the Treatment of Prisoners, and the recommendations given by among others, the Committee against Torture and the Working Group on arbitrary detentions.

The conditions in which the detainees and sentenced are forced to serve the deprivation of freedom and the sentences, go against their fundamental rights²¹⁵. They are characterized by the overcrowding²¹⁶, the absence of rehabilitation programs, the coexistence of an internal exclusion system and social differentiation, which makes that only detainees with a higher income can have access to a better life-standard inside the prison; and a sustained increase of physical insecurity of detainees.

Although there is no official or unofficial data, it can be argued that only a limited group of foreigners (mostly Europeans or citizens of the United States) have access to better conditions of imprisonment, with the support of their families from outside. However,

²¹² Regarding how rigorous the treatment is, it must be taken into consideration the Proyecto de Ley [Bill] Number 27-1029, 14-02-06; by which it was intended to aggravate the punishment for foreigners committing a crime in the country. www.congreso.gov.ec

²¹³ Case CEDHU, 1-07-2003, Torture and solitary confinement

²¹⁴ Plan Pais Ecuador 2005, En busca de Justicia, Derechos Humanos, Apuntes para la Reflexion, Number 4, AH/Editorial, 2005.

²¹⁵ CEDHU, INREDH, Clínica de Derechos Humanos PUCE, Informe Alternativo Convención contra la Tortura, 2005.

²¹⁶ This is due to the adoption of policies of criminal persecution and criminal toughening, like the approval of the Law of Illicit Trade of Drugs, the drastic drop in the system of reductions, the implementation of the figure of firm detention, by which the constitutional length of preventive detention period (in force until 2006) was left without effect, the judicial slowness in the resolution of processes, the demand to pay high fines as a requisite to obtain freedom in cases of drug-traffic, and the absence of an effective public criminal defence process.

most of the Colombian and Peruvian detained foreign population is poor and therefore, is exposed to the general conditions of precariousness and breach of their rights.

Contrary to what the State declares, there is no differentiated treatment in the schedule and hours of visits for the foreign population; regarding consular representation, very few consulates have established a system of periodic visits and support to their nationals.²¹⁷ In addition, one of the most serious problems is the impossibility of the payment of the fines imposed in the sentence, which limits the right to freedom once the sentence has been served.

According to CEDHU, in the last two years, there has been an increase of complaints about conditions in prisons, specially those referred to ill-treatment, abuses and extortions committed by prison personnel or cell-heads. There have also been executions inside the prisons, in which foreigners have died, particularly Colombians, in the application of the "jailbreak-law" or fights between bands.

Colombian prisoners in the Prison of Tulcán denounce that the precarious conditions of the prison do not allow the rehabilitation. The prison has a capacity of 120 inmates and at the moment there are 350. They only have 6 bathrooms for all the population and they do not have medical assistance and medicines. They say their state has forgotten them.²¹⁸

Two Colombian prisoners were shot dead inside the prison. It is presumed that they tried to escape and that the penitentiary personnel applied the "jailbreak-law". A penitentiary officer stated that they were found escalating the wall and that they did not pay attention to the orders to stop and that they were shot for that reason. One of the bodies had 8 shots and the other one 26, distributed in the face and stomach, made from a long distance and from the back forwards.²¹⁹

A Colombian woman of old-age was registered in her intimate-parts before entering the high security wing of García Moreno prison, to visit her son. She was forced to undress; an officer touched her intimate body area, and forced her to bend-down three times. The guide took the money she had for her accommodation and other expenses.²²⁰

Even though it is true that Ecuador has signed agreements for the repatriation of foreign detainees; the legal and factual mechanisms for their fulfillment have not been found out over the years.²²¹ One of the main limitations has been the difficulty to determine the mediating institution, channeling the repatriation processes. Due to the lack of a Public Defense State Agency, this function has been assumed by the Agency of Legal Consultancy of the Foreign Affairs Ministry.

²¹⁷ Detainees of the female prison refer to the presence of representatives or members of associations of USA citizens or Colombians.

²¹⁸ Case CEDHU, 2/08/05, Prison system shortcoming.

²¹⁹ Case CEDHU, 24/10/06, Extrajudicial execution

²²⁰ Case CEDHU, 10/07/04, Prison system shortcoming, cruel, inhuman and degrading treatment, discrimination.

²²¹ According to MIRA, Colombian organisation working to provide assistance to Colombian detainees, the Agreement between Ecuador and Colombia signed in 1994, was only executed until 1999, remaining inactive between 2000 and 2006. El Comercio, 22/07/07.

Recommendations:

- The Ecuadorian state must carry out a serious process of restructuring of the penitentiary system and of the Justice system, and adjust them to international human rights standards.
- It must implement the recommendations of the specialized UN organizations and other protection entities.
- It must promote the application of the principles of equity, no corruption and no discrimination with authorities, judges and magistrates, when judging the crimes committed by people in general, and foreigners in particular.
- It must guarantee that in the trials for common crimes to migrant workers, the basic rules of due process must be respected, specially the right to defense, the right to an interpreter, consular representation, no arbitrary detention, no prison for debts and no torture or cruel, inhuman or degrading treatments.
- It must establish an effective service of public defense for migratory workers.
- It must establish a strong process of judging, punishing and amending abuses and human rights violations.
- It must establish a specific system that guarantees the right to consular assistance and representation of detainees in the rehabilitation centers.
- It must establish effective mechanisms for the protection and support of pregnant women, women with children and old-age people.

2.3 *RIGHT TO AN EFFECTIVE AMEND AND COMPETENT MECHANISMS (Art. 83; Question 11)*

The Political Constitution of Ecuador establishes in articles 20, 21 y 22, the State responsibility and the right of people, without any kind of discrimination, to receive compensation in cases of a deficient provision of public services, reformed or reversed conviction sentences and in cases of judicial error, arbitrary detention and violations of due process.

In turn, Art. 29 of the Migration Law establishes that in those cases in which the refusal to deportation is confirmed, the detained foreigner, will be able to exercise the damages action.

To this legal frame, a specific frame in the Civil and Criminal Code is added, for those cases of moral damage and compensation damages.

Despite the existence of this normative framework it is important to note that in practice the right to an effective amend is not carried out in the country, due to the lack of a secondary legal frame to regulate and to allow it be exercised. To this regard, justice personnel pointed out that "formally there are certain mechanisms to process compensation lawsuits, but in practice they are inefficient to process the amend demands ".²²² The few compensation actions from the State are the result of previous

²²² INREDH-CEPAM, Derecho a la reparación en el procesamiento penal, Imprenta Cotopaxi, Quito, 2000.

processes of amicable settlements promoted by the Inter-American Commission of Human Rights.

Regarding the competent state instances to receive the complaints of presumed violations of migrant workers' rights, they are: mayors (Habeas Corpus); judges and Instance Tribunals (Legal Protection, Habeas Data and Access to information); the Constitutional Tribunal (court of appeal for the refusals of the guarantees and unconstitutionality lawsuits); the ombudsman (to defend and promote the fulfillment of human rights); the Labor Ministry (Agencies and Offices of Labor Migration) and the Judicial Branch, through the Labor Judges (dealing with labor complaints).

Despite the existence of these institutions, they are not very efficient in practice, because their personnel have very little knowledge about the Convention and the rights of migrant workers; in addition, there is very little demand, due to the lack of knowledge of the migrant population about their existence and the right they have to turn to them.

Recommendations:

- The State must establish an effective legal framework that makes the constitutional right to amend possible, when there have been violations to the Constitutional rights or those in international agreements and treaties, in particular the ones referred to migrant workers.
- The State must establish a process of training of officials, judges and magistrates in the migratory subject; accompanied by the dissemination of those mechanisms among the population.

2.4 CONDITIONS OF LIFE

2.4.1 Discrimination (Art. 7, 5; Question 10 and 15)

As declared by the State, the right to equality and no discrimination is guaranteed by the Political Constitution. However, the normative framework and public policies are still very limited, since there are no effective mechanisms to prevent and penalize discrimination. The Constitution does not expressly point out to nationality and migratory condition as one of the reasons for discrimination; and the Criminal Code only penalizes racial discrimination acts, and no other forms of discrimination²²³.

Together with these limitations of the legal framework, the State shows a lack of action regarding de facto discriminatory practices. In this sense, it is important to take into consideration that the Ecuadorian society shows a cultural practice of discrimination, specially towards the indigenous population, that of afro descent, GLBTT and in the last years, towards the foreign population, particularly Colombians and Peruvians.

²²³ Since the end of 2005, it waits in Congress without approval, a Bill on discrimination intending to establish preventive mechanisms and the punishment of discriminatory practices.

The Colombian population claims being victim of xenophobic and discriminatory attitudes in daily activities, be it in the neighborhood, in the school, public transport or work.²²⁴

The Peruvian population links discrimination to the strong police persecution they endure:

*"Discrimination, there is not much in Machala, the Ecuadorian citizen has learnt to coexist; the discrimination is always from the police"*²²⁵

For the Jesuit Refugee and Migrants Service, Colombians are discriminated by authorities and population in general. They are stigmatized by their origin, they are linked to drugs, criminality and prostitution. They are not sufficiently informed to integrate in the host country and have difficulties in the processes of integration and coexistence.²²⁶

Ingrid, 32 years old Colombian, living in Ecuador for the last seven years, went to a police station at the end of April to report that her mobile phone had been stolen. She was told that there, that they did not receive reports from Colombians, only against them, telling her that she should go to another police department.²²⁷

For INREDH, the discriminatory practices have gone from attitudes of exclusion in the daily dealings to aggression practices, which sets a rise in the levels of intolerance, to which there are no adequate state responses.

A Colombian HIV positive, who was working selling empanadas in Riobamba was physically attacked by a group of four people "because he was Colombian and because Colombia gave political asylum to Gutiérrez"²²⁸, the aggression was so violent that he had to be taken to hospital. He reported the event, but because of fear he decided to leave the city and not come back.²²⁹

This situation sets off from the perceptions or beliefs that have been created about foreign people. According to a study about perceptions of foreigners in Quito²³⁰, these go from acceptance to rejection, these two with a tendency to intensify, especially regarding Colombian and Peruvian population. The study explains that European and Latin-American people are preferred and to a lesser degree Colombians and Peruvians. Tourists and people who come not to stay are better accepted. In the same way, people who entered with a legal visa are preferred. Perceptions against Peruvians take up again the ancient conflict with that country. Colombians are linked with topics of violence and drugs; they are also considered "more vivacious" for diverse activities, which puts the Ecuadorian population in disadvantage. There are also negative perceptions about the Chinese population, who are considered as "dirty and exploiters".

²²⁴ FLACSO – Municipio de Quito, Taller Diagnóstico con Inmigrantes Colombianos, Quito, 12 de julio del 2006. Workshop with a group of 50 Colombian migrants.

²²⁵ Interview to Carlos Valdez, op. cit.

²²⁶ SJRM, Contexto del Refugio, Adital, 18-06-07, <http://www.adital.com.br/site/noticia.asp?lang=ES&cod=28090>

²²⁷ Adital, Xenofobia galopante en Ecuador. Colombianos y peruanos son maltratados por autoridades ecuatorianas, <http://www.adital.com.br/site/noticia.asp?lang=ES&cod=7816>

²²⁸ It refers to Lucío Gutiérrez, former President of the Republic.

²²⁹ Caso Movilidad Humana, Conferencia Episcopal, Octubre 2005.

²³⁰ Chávez Gardenia, Población Extranjera en el Distrito Metropolitano de Quito, Presencia, Percepciones y Política, Versión Preliminar, Diciembre 2006.

The perceptions have gender connotations and carry implicit moral prejudices:

A brothel was opened in the neighborhood, the girls working there were Colombians, they were exhibiting themselves all day, with very provocative clothes (informer north neighborhood).

Since Colombians arrived « faggots are seen as something normal) (informer north neighborhood).

The perceptions of rejection towards Colombians are linked to security:

The presence of Colombians affects negatively first in security because thefts and crimes in general have increased and also in employment because they take now many employments that would be filled by Ecuadorians (Police).

... higher in Santa Bárbara there are Colombians with guns and drugs, they have created a sort of ghetto where the people from Quito cannot enter, the other day there was a row and some drug dealers killed among themselves (informer south neighborhood).

Recommendations:

- The state needs to improve its legal protection framework, to prevent, investigate and censor discriminatory acts – especially those perpetrated against the foreign population.
- The state must also establish programs and educational policies aimed at combating discrimination and favoring dialogue, cultural integration, and harmonious existence between nationals and the migrant population.
- The state should create forums for sensitizing the mass media, police, judges, and other state authorities on the rights of migrant workers. These forums ought to include images and discourses that promote respect for this population. Such forums would provide an opportunity for the state to stand up for the principle of coherence and co-responsibility in the treatment of the migration theme.
- The state must coordinate with civil society to found and operate information centers to aid the integration of foreign population into Ecuadorian society
- The state ought to abandon the practice of performing a criminal background check on Colombians who attempt to enter Ecuador, as this process does not comport with standards for international protection of human rights, nor the regional accords relating to the migratory flows across borders. This represents a discriminatory application of law against the Colombian population.

2.4.2 Right to Work and Social Security (Art. 25, 27, 54, 55, 70, 68.2; Question 16 b), 18, 26, 27 b))

Constitutional and legal recognition of individuals in a country is measured in part by the ability of individuals to exercise the right to work and obtain some level of social security. In Ecuador, the real exercise of these rights is very limited, both for nationals and for foreign persons, as the following data demonstrates:

According to INEC²³¹, in March of 2006, the global rate of urban unemployment was 9.9% for the population between 30 and 39 it was 7.13% with a clear gender gap, between men (3.79%) and women (11.26%). In addition, this unemployment rate showed marked increase in the case of young people (18 to 29 years-of-age), rising to a rate of 16.60% and greater still among young women, at a rate of 22.56%

On the other hand, the global rate of underemployment was 62.5% overall, maintaining a rate of 53.30% for the population between the ages of 30 and 39 and a rate of 51% for youth. That is to say, more than half of the employed population of this country has a unsuitable work, characterized by untenably low wages, increasing hours and/or the absence of social benefits.

Although the rate of unemployment has improved slightly in recent years, occurring at a rate of 14.4% in 1999, 11.50% in 2003 and 7.13% in 2006, the persistent growth of underemployment and the diminution of the minimum wage evidence the fact that real and suitable conditions for the access and exercise of the right to decent work do not exist.

According to the ILO²³², in 2005 in Ecuador the industrial wage diminished by a rate of -7,8% and the number of persons employed in the informal sector increased to an average rate of 60% of the population. The minimum wage in 2006 was 160.00 USD while the basic family expenditures were 453.26 USD. The INEC estimated that the average monthly take-home salary in Quito was 498 USD for those employed in the modern sector, 254 USD for those employed in the informal sector, 216 USD for agricultural workers and 170 for those employed in domestic service. Variations were noted in other cities like Guayaquil, Cuenca and Machala, where a loss in the take-home salary by domestic servants was recorded, falling to levels of 133 USD, while the take-home pay for agricultural workers increased, to an average of 390 USD in Cuenca and Guayaquil. For all laboral activities in all of the cities, the take-home pay for women was recorded at lower levels than their male counterparts and in no case did their take-home pay cover the average expenditure.

The diminution in unemployment registered in recent years directly correlate with the emigration of an economically active population and to the entrance of remittances from Ecuadorian immigrants living abroad (second leading producer of income for the country) and the increase in the prices of petroleum. This demonstrates the dependent and volatile character of the Ecuadorian economy.

²³¹ ENEMDU, March 2006, Unemployment and Underemployment, by sex and generation.

²³² ILO, Laboral Panorama 2005: Latin America and the Caribbean, First Semester Review, www.cinterfor.org.uy/public/spanish/region/ampro/cinterfor/newsroom/hechos/pl2005.htm.

According to a FLACSO study, a crisis of the formal employment is demonstrated that reflects a decrease in the importance of the public work, a progressive increase in the informal sector and the precariousness of the wage. An indicator that can serve to confirm this last effect is the low percentage of employed persons who benefit from social security. In effect, in the month of July 2003 66.9% of the occupied persons did not have health insurance, and of them, 63% labored within the informal sector of the economy. This situation contrasts remarkably with that which occurred in the country in 1990, according to the ILO, when 72.1 % of the wage-earners had some kind of social security. By 2000 ILO estimated that percentage of wage-earners with social benefits had fallen to barely 48,9 %²³³

According to official data of the Ecuadorian Institute of Social Security, in June of the 2007, of 6,000,000 PEAs, 1,918,373 were wage-earners with dependent relations; of these 1,918,373 wage-earners with dependent relations, 1,295,834 had health insurance while 622,539 were uninsured.²³⁴

The previously mentioned FLACSO study concludes that the high rate of underemployment or informal work reflects the precariousness of the labor market and the general impoverishment that affects the majority of sectors of the country. Those most affected as much by unemployment as well as underemployment are women, youth and the illiterate.

Upon this base of knowledge, which demonstrates the precarious nature of the general labor conditions in Ecuador, the deterioration of the quality of life in the country, and the continued prevalence of poverty within the Ecuadorian context, we will analyze the main limitations that the immigrant population faces in the areas of accessing the right to the work and the egalitarian exercise of its rights.

2.4.2.1 Formal Work

Access to the formal labor market is very limited when analyzed in the context of the migratory flows, dependent as it is on holding a specific work visa. The people who enter the country under this modality represent as little as 0.27% of the migratory balance. They are tied to the private sector of the economy, because foreigners cannot be state officials, although some are contracted in public institutions as consultants.

Some differences in the wage levels and benefits manifest according to country of origin of the wage earner:

The Colombian and Peruvian workers, generally labor as administrative employees, sales assistants in stores, and contractual day laborers. They have difficulties finding jobs in accordance with their professional training, because the degrees obtained in their home countries are not recognized, or because they cannot present/display the necessary professional documents (as is the case for refugees who have left their countries of origin and cannot return). Their wages and benefits subsist at the lowest of standards;

²³³ Martínez Valle Luciano, Employment Trends in Quito, Guayaquil and Cuenca, Septiembre del 2003. FLACSO

²³⁴ El Comercio, 16/06/07, IESS loses 114 million USD pierde every year because of avoidance or evasion.

conditions that they are often forced to accept because they depend on their employers to renew their contracts and to maintain legal status within the country. It is necessary however to recognize that professional Colombians also exist who have entered the country and have begun companies that create sources of work for Ecuadorians and Colombians alike.

The professionals or technicians of other nationalities may accede to the labor market with access to better conditions and elevated remunerations and benefits than their counterparts. Their compensation and benefits may even go beyond those required by law (private insurance, travel allowance, etc).

In terms of access to the social security, according to data of the IESS, by March of 2006, 8,060 insured foreign workers existed,²³⁵ which approximately represents 0.6% of the general total of insured persons. The majority of insured are Colombian, Chilean, Surinamer, Cuban, Peruvian, Spanish and American.

2.4.2.2 Informal Work

The majority of Colombians and Peruvians - having entered the country irregularly, or possessing refugee or protection visas - work in the informal sector. Many of them, or forced into the informal sector because of their irregular status or because of the absence of effective spaces for accessing the formal labor market.

The Colombian informal workers dedicate themselves to occupations such as traveling vendors of clothing, food, crafts, cards for cellular telephones, candies and other merchandise. They also labor as employees in stores, domestic service, private security companies, or as contracted agricultural workers, among other fields. Their work is based on verbal contracts in which wages are set below the legal minimum generally, without social benefits and with longer hours than in those in the formal sector. The population is concentrated generally in the cities of the border like Tulcán, Ibarra, Sucumbíos. However the number of Colombians grows greater every day in cities far from the border, most especially in Quito.

The Peruvian workers mainly labor in informal commerce market, though they also have penetrated the construction and mining industries, and toil on banana and flower plantations and in domestic service. Like Colombians they are subject to conditions of labor disadvantage. The Peruvian population is generally concentrated in the border provinces of El Oro, Azuay and Loja, with a growing presence in the interior of the country.

Construction Work is achieved by both Colombians and Peruvians. Wages range between 30 to 40 USD per week and are subject to high competition in the local market. In this area tensions exist with the local workers, who denounce the foreign workers for

²³⁵ IESS, response to a request for access to information by INREDH, April/2006.

selling their labor too cheaply, especially Peruvians, which reduces labor possibilities for local workers.

The Colombian and Peruvian workers who arrive in the country must receive like us [\$80 per a week], because at rate the \$40 a week, which they request, they are gifting themselves", denounces Jose Linasunta, an Ecuadorian plumber... In addition, he complained that bosses offer foreign workers longer contracts than they offer Ecuadorians. "That should not happen in our country"²³⁶.

Those who choose informal commerce (traveling sales) do so without municipal permission, which exposes them to continuous risk of merchandise seizure by municipal police, as well as to possible detainment for deportation, and extortion. They also face price competition and clientele competition with national retailers, some of which have a practice of reporting immigrant traveling merchandisers to the police so that they deport them. Nevertheless, positive relationships with local retailers have been created, as retailers in some cases have welcomed them into their trade associations, giving immigrant workers support from the guild in cases of conflicts with the police.²³⁷

In Esmeraldas the Colombian informal workers are victims of the aggression of the municipal police, Ecuadorian informal workers and the Immigration Police. To our knowledge reparations have never been made after the seizure of merchandise of an informal Colombian worker by the Municipal Police.²³⁸

According to the offices of Movilidad Humana of Machala,²³⁹ many Peruvians work on banana plantations, especially in the show up on global statistics, calculates that there are between 8 to 10 Peruvian work-gangs on each large property of the zone. They are men and women, all in irregular legal situations. They work from Monday through Friday, receiving a remuneration that ranges between the 35 to 45 dollars per week. This compensation is about 10 to 15 dollars less than nationals receive for the same work. The women and the children receive less compensation in accordance with a lower level of labor yield. The labor contracts are generally verbal, made by the head of the work-gang for the entire group with the owner of the property. People sleep on the same properties where they labor in improvised dwellings. They are provided with food, but the value of their consumption is discounted from their weekly compensation. They receive Saturday mornings free, which they use to return to the Peruvian side of the border. The majority of people are from neighboring Peruvian states such as Tumbes and Suyana. Many people work for more than two years in this system, continuing on the same property. They do not have any type of social benefit: no vacations, no health insurance.

For the Banana Industrialist it is convenient to contract irregular manual labor because of the low level of pay required to hire such persons. The labor conditions are deplorable; the laborer must accept the conditions that the

²³⁶ Hoy Online 4 March 2007, www.hoy.com.ec/NoticiaNue.asp?row_id=260387

²³⁷ Information base maintained by INREDH for Colombian businessmen in Quito.

²³⁸ Movilidad Humana Esmeraldas, response to a questionnaire from Coalición, May/07.

²³⁹ Movilidad Humana Machala, response to a questionnaire from Coalición, July/07.

employer gives him. Some exceed the hourly work limitations time and receive less than minimum payment.²⁴⁰

DYA²⁴¹, reports that according to observations made by its field team, in mining sectors like Villa Rica (Ponce Enrriquez- Azuay), the Peruvian adult population labors in the mines, generally under very precarious conditions and with wages that are half that of Ecuadorian workers (60 USD monthly as compared to 130 USD earned by Ecuadorian nationals).

Catholic Pastoral Service for Migrants of Ibarra²⁴² reports that a considerable number of Colombians labor in the flower industry. They are paid wages of 120 USD to 180 USD monthly. The work is temporary and laborers lack social benefits. Organizations of Catholic Church in southern Ecuador, report that Peruvians labor on flower plantations in the p in the province of the Azuay (in the zone of Paute).

The labor conditions on the flower plantations, much like those on the banana plantations, are high-risk given the amount of chemicals that are used to which workers are regularly exposed. The plantations do not comply with the norms for safety and hygiene established by the Code of Labor. These facts lead workers to become vulnerable to permanent health conditions, compounded by their lack of worker compensation or health insurance benefits.

One irregular Peruvian worker comments that she worked for four months on a flower plantation in the valley of Zhumir, Paute zone, in the province of Azuay. They paid to her biweekly, at a rate of 0.80 USD per an hour for 6 days a week of work. She earned an average of \$147.00 USD at harvest-time, working from 7:30 AM to 10:00 PM daily. When not on harvest hours, she earned 95 USD, working from 7:30 AM to 7:00 PM. She worked uninsured, although if her Ecuadorian counterparts were insured. If a person became ill from the pesticides, she was sent to the infirmary where she was offered the most basic of assistant. The same company had the foreman hire extra workers during harvest-time and immediately dismiss the extra workers after harvest-season ended so that only the oldest remained. The Peruvian worker came to work in Ecuador to pay for her final thesis studies to conclude her professional training requirements.²⁴³

According to the Catholic Pastoral Service for Migrants of Tulcán, in the province of Carchi, immigrant workers are most frequently contracted through the agricultural worker-group system where in the earnings of the workers are given to intermediaries. The landowner pays 5 USD daily, of which 2 USD is given to the head of worker-group and 3 USD goes to the actual worker. In these groups, women and children earn a dollar less, as they are considered less efficient than their adult male counterparts.

The worker-groups are used for agricultural activities especially for the cultivation and harvesting of potatoes. The seasonal work varies according to the geography of the territory. The harvest and cultivation cycle for potato production is six months in length,

²⁴⁰ Interview with Entrevista Luis Paredes, SJRM

²⁴¹ Interview with Gustavo Guerra, DYA, nonstateal organization that works against child labor in mines and banana plantations in the South of Ecuador, August 2007.

²⁴² Information from data collected for preparation of the Shadow Report, La Armenia, Quito, June/07

²⁴³ Case from Movilidad Humana Quito, recorded by Coalición, June-07

thus there is a spike in work twice a year, usually during the months of March and August. During the height of harvest season, some migrant farmhands come to live in the territory for three months or more, lodging in small, old shacks on the properties where they labor. In other cases, if they live near the border, migrant farmers come and go every day, transported in trucks over the border. The head of the work-group is in charge of gathering the work-gang, and placing his party along strategically important points of the border to make the journey towards points in the interior of the country, such as Teques, Rio Carchi, El Minguero, El Carmelo, El Frailejón and Cartagena. In the San Gabriel area the rendezvous point is La Posta, but the dynamics of this city is such that the majority of workers have been residing within the San Gabriel region with irregular status for some time (an average of 5 years).

On the other hand a conflict between Colombians and the local Ecuadorian day-laborers exists. Colombian day-laborers are accused of lowering the salary bar for unskilled manual labor, thus stealing Ecuadorian jobs as the landowners hire Colombians because their labor is considered a better bargain.²⁴⁴

In the Esmeraldas province on the border with Colombia, the immigrants and migrants also labor as migrant palm-plantation farmers. According to a study by the UASB, Colombians settle in the camps surrounding the palm plantations, in the large towns of San Lorenzo, Borbón, Limones, and also in some of the communities of the Northern "Tres Cantones" zone. The palm plantation industry, according to evaluations by local groups, take advantage of the easy to control, adaptable, and functional labor force offered by the migration of Colombians away from the conflict. Due to their circumstances, the Colombian workers have no organizing or collective bargaining capabilities and their wages may be maintained at substandard levels.²⁴⁵

2.4.2.3 Women and Work (Question 15)

No official labor statistics document the situation of migratory workers. The migratory statistics indicate that women account for 45% of the total foreign-born population. A study conducted by a nonstateal organization made the following findings:²⁴⁶

55% of immigrant women are female head-of-households. 66% could find a job not long after entering the country. 35% found permanent work and 50% found temporary or seasonal work. A 34% are unemployed, but of these 44% have tried to find work unsuccessfully, while another 38% are limited by their preference to avoid breaking labor laws. Of the total immigrant women who work 76% have dependent relations and 33% have no other person to support. A small percentage of women work in exchange for room or board.

²⁴⁴ Pastoral Migratoria de Tulcán, response to an inquiry by Coalición, May- 07

²⁴⁵ UASB – BID, Social Effects of the Colombian Conflict in the Northern Border of Ecuador, Convention Nro. ATN/SF-8883-EC, Executive Summary, pp. 51-52

²⁴⁶ INREDH, Refugees and Workers, The Labor Conditions facing Women living in Refugee Situations, Investigatory Series 11, August 2006. Demonstrating the situations of 230 women: recognized refugees, asylum seekers in process, denied asylum seekers, and those who have not tried to seek international protection in the Ecuadorian system. In the areas of Carchi, Ibarra, Lago Agrio, and Quito.

Of the women with dependent relations 44% make their living in domestic service, 19% are maids for private companies, 5% are contracted in sales, and 2% are craftswomen. Approximately 70% of the women workers with dependent relations receive compensation at an inferior rate to the minimum wage (160 USD) and work an average of 12 hour a day.

An estimated 33% of women workers without dependents labor in the informal commercial sector engaged in: food preparation and sales, and the sale of arts and crafts. 42% receive less than 100 USD for their labor, while 35% make above 100 USD. A high percentage of women have no fixed level of income, reporting that they may earn anywhere between 0 to 120 USD during a pay period.

The main labor problems suffered by migrant women are: discriminatory treatment (for being women, for being Colombian, for membership in an ethnic group, or because of their status as migrants with irregular or refugee status), lack of recognition of social and labor benefits; and sexual harassment and exploitation by police.²⁴⁷

The Colombian and Peruvian women generally labor in domestic service, both in the home and outside of the home, with wages ranging between the 100 to 150 USD monthly. They also do part-time work make as laundresses and housekeepers, allowing them to take care of their dependent children. However, this kind of work generally yields extremely low wages of around 20 to 30 dollars per a week. One of the main problems that immigrant women face is the absence of low-cost day-care centers where they can leave their children during the work day.

Although a large percentage of women of these nationalities have basic levels of education, some have superior technical or educational training, but do not have the opportunity to find work in agreement with their skill level. This gap is attributable to the discrimination they face on account of their nationality or ethnic group.

One Afro-Colombian woman indicates that in Ecuador she cannot obtain employment in her profession. She is a nurse. In order to survive she dedicates herself to make domestic service. Approximately month ago she remained unemployed, supporting herself only through occasional income gained from washing clothes and cleaning houses. She earns little money, barely enough to survive, taking home about 100 USD a month. At one interview she had to work as a live-in nurse, she was told by the employer that they would not hire her as they "did not want black women." The woman reported she is very sad and feels very discriminated against for being Colombian and for the color of her skin in Ecuador.²⁴⁸

Also, in the face of the lack of gainful employment, some women (Colombian and Peruvian) have entered the sex-work industry. The Colombian women face a particularly vulnerable situation in Lago Agrio (in the province of Sucumbíos) named a red zone because of the presence of armed actors. The women labor in the sex-industry work without guarantees and confront an especially vulnerable situation, exposed as they are

²⁴⁷ Colombian women confront stigmatization associated with being stereotyped as prostitutes.

²⁴⁸ Case history, Movilidad Humana Quito, recorded June-07

to dangers, police exploitation, and detention and deportation as undocumented people.²⁴⁹

2.4.2.4 Boys, Girls, Adolescents and Work (Question 16 a & b)

*Minors, many of whom come over with their families, become part of the work force as well: selling candies, begging for alms. As Peruvians, this situation pains us.*²⁵⁰

According to the Second National Survey of Child Labor, 662,664 children ranging in age from 5 to 17 years are working, mainly in the agricultural field. This number represents a reduction when compared with the number of child laborers in 2001, which came to 779,000 children. According to the State, this diminution may be attributed to the implementation of the National Plan for Eradication of Child Labor and the creation of a regulatory office of Special Child Labor Inspectors.²⁵¹

Concern over this subject arose as a result of a report released by Human Rights Watch,²⁵² which established a high incidence of child labor on banana plantations.

Although the State mentions that this type of work has diminished, the Machala Office of Movilidad Humana, has verified that in many of the banana plantations children and adolescents continue to comprise a segment of the work force.²⁵³ Although concrete statistics are not available, it is presumed that some of the minors are Peruvian that travel with their parents to work as migrant farmers on the plantations.

On the other hand, INREDH has documented Colombian children and adolescents work in markets, particularly in stores or houses, or helping to their mothers to earn money. Through case-studies it was determined that Colombian children who work as vendors toil up to 50 hours a week, for which reason they cannot attend school.²⁵⁴

In the province of Esmeraldas the presence of a workforce of Colombian children and adolescents that labor in the collection of shells. These children are vulnerable to the risks that this type of work entails.²⁵⁵

²⁴⁹ UNDP, UNIFEM, Canada, Gender and the Northern Border, March 2007, pp. 38.

²⁵⁰ Testimony of Carlos Valdez.

²⁵¹ El Comercio, 4 de julio del 2007, 662,664 children work in Ecuador, http://www.elcomercio.com/noticiaEC.asp?id_noticia=116545&id_seccion=8

²⁵² Human Rights Watch, Tainted Harvest: Child Labor and obstacles to the freedom to organize labor unions on the banana plantations of Ecuador, 2002.

²⁵³ In the corner of El Guabo, El Oro Province (sectors of La Victoria: Hda. Agricultosa, San José, Farm of Manuel Asencio; El Placer: Hda. El Dorado; El Naranjo: Hda. Jenny Judid. Santa Cruz: Hda. Hugo Borja; La Maravilla: La Lima Farm), the presence of 13 working minors was documented. Their ages ranged between the 13 and 16 years of age. They work between 8 to 9 hours daily. Their compensation is smaller than that of the adults and in some cases they are not paid because it is understood that they are there to help their parents.

²⁵⁴ Engels Wells Nelly, Women without refuge, INREDH – Project Advisor, Investigatory Series No. 8, January/04, pp.35

²⁵⁵ UASB – BID, Ob. Cit, p. 52

In Sucumbíos, the Colombians who engage in sex-work are by-an-large teenage single mothers. The estimated age of the girls who work in the bars (called *chongos*) of the city ranges between 14 and 22.²⁵⁶

Recommendations:

- The State must establish effective measures to guarantee decent labor conditions for the population. It must therefore labor to reduce the rates of unemployment and underemployment, and also create policies with specific attention to disadvantaged groups, especially women, children and adolescents, and the people with lower levels of education.
- The State must impel the establishment of a sensible labor policy with operations meant to prevent discrimination, abuse and exploitation of all women foreign workers. In particular, it must establish policies that permit the just valuation of domestic work, require employers to give appropriate social security; and establish specific measures to protect those who labor in the informal sector. In addition it must implement a day-care center system to support working mothers.
- The State must immediately establish a social intervention policy for foreign children and adolescents, especially Peruvian and Colombian minors, who have come to be integrated into the agricultural workforce on banana and flower plantations, and in the labor forces in the mines among other types of industry. The State must adopt specific measures to fight the use of children and adolescents in prostitution. The needs of the foreign minors must be incorporated within the Social Agenda for Childhood and Adolescence, in the Work Plans of the Ministry of Education, Social Welfare and Labor.
- The State must implement a serious labor reform process in order to establish a suitable treatment of migrant and foreign workers, and to determine concrete mechanisms for the protection of their labor rights.
- The State must incorporate in its legislation and policies attention to the international standards for protection of the rights of migrant workers, in particular Advisory Opinion 18 and Agreements of the OTI, especially those relevant to relative the rights of the migrant farm workers, social security and an end to all the worse forms of child exploitation.
- The State must establish effective measures to prevent investigate and censor forms of worker exploitation, establishing intervention policies that contribute to eradication of such practices.
- The State must implement information/sensitization campaigns among the foreign and local worker population to reduce the levels of conflict between the groups. It should promote regularization processes, with the purpose of supporting the human dignity in the workplace.
- The State must establish policies that eliminate the gap between the wage level wages for nationals and foreign workers, and with continued attention toward

²⁵⁶ UNDP, UNIFEM, Canada, Ob. Cit. pp. 38.

- the elimination of wage differentiation along other factors like age, sex, migratory condition, and membership to an ethnic group.
- The State must establish mechanisms that allow for easy and effective transference of professional degrees.
 - The State must establish an information campaign to instruct the foreign population on their labor rights in order to have an effective system bargaining system in the workplace, free of discrimination.
 - The State must promote and support access for the foreign population to programs for micro-credit companies.

2.4.3 Human Trafficking and the Trafficking of Migrants (Art. 68 ; Questions 6, 27)²⁵⁷

The Ecuadorian Constitution prohibits slavery, forced servitude and the trafficking in human beings in all its forms; in particular, it assures protection for children and adolescents against trafficking.²⁵⁸

A study by INREDH established that 57% of the women interviewed had worked some time in exchange for room and board. This type of indentured servitude, typified by this type of payment, is especially common in the realm of domestic service, although it is also seen in agricultural labor and traveling sales.²⁵⁹

This also seems to affect children and adolescents employed in domestic service:

A 10-year-old Colombian girl swept floors, ironed clothes and cleaned bathrooms. When she committed an error, she was reprimanded, sometimes beaten while she tried and failed to avoid the blows. The little girl fled her prison one week ago, after a neighbor helped her to escape through one of the windows of the house. When she arrived at the Police Station she related her story of mistreatment and exploitation. She had worked for the family for a year and had never been paid a cent. It arrived in Quito from Ipiales, Colombia. Neither she nor their brother had documents. The mother gave her children away, believing they would be cared for with other children of the household. The girl's brother was forced to carry sacks and help the "owner" in his in the agricultural work, also without payment. In return what the "owner" fed the children and gave them a place to sleep (in a warehouse with a bed, surrounded by empty boxes).²⁶⁰

²⁵⁷ Contributions sent by Azucena Soledispa de CLADEM – Ecuador, April 2007.

²⁵⁸ Art. 23.4 & 50.4. Constitución Política de la República del Ecuador. August 1998.

²⁵⁹ *Ibid*, p.28.

²⁶⁰ Latest News, 3-04-07, Event: Camila, 10-years-old and her brother, 15-years-old, obligated to work in a home in Tumbaco. Escaped through a window and denounced mistreatment.

In Ecuador, since 2005²⁶¹ trafficking in persons has been considered a crime.²⁶² In addition, in 2006 the State approved a National Plan to Fight Human Trafficking and the Illegal Trafficking in Migrants, making it illegal to traffic people for work in the sex-industry as well as for the prostitution of women, children and adolescents. The law included a ban on trafficking for the purpose of child pornography and the corruption of minors. The Nation Plan's implementation is still pending but lawmakers hope that it will become a framework for the solid legal recognition of the problem with a sufficient budget to carry it out.

In spite of the importance of this theme, as yet there has only been one qualitative study of the problem in Ecuador, conducted by the International Labor Organization, ILO.²⁶³ In accordance with this study, adolescent girls are the main victims of commercial sexual labor. Girls from both the native population and from foreign countries are equally victimized in the sex-trade. Principally, adolescent girls are trafficked from Colombia and to Peru and Chile. The report indicates that children and adolescent trafficking victims enter and leave the country by land, where there is virtually no border control, or by air, in many cases with forged or false documentation, counting on the negligence or complicity of various Ecuadorian authorities.

The afore mentioned study also documents account the dynamics of trafficking. Female children and adolescents are more vulnerable than male children and adolescents. Historically in Ecuador commercial sexual exploitation targets young women. Lately the sex trade has especially targeted Colombian children and adolescents in the zones along the Ecuadorian coast. Such children are the most requested by the "clients" of the highly the lucrative sex market.

According to a ILO-IPEC study there are nearly 25,000 female sex-workers in Ecuador. It is estimated that 20% (5200) of them are adolescents between 15 and 17 years of age, 44% have at least one child, and nearly 70% are immigrants of Colombian nationality.²⁶⁴

Another study establishes that in the border provinces organized networks of sex-bars have proliferated where minors are utilized in prostitution. These bars have dealings with members of the irregular armed groups of Colombian that operate at the margins of the law. The armed Colombian groups cross freely along the Ecuadorian border to gather supplies, to rest, take temporary refuge or to get their wounds treated. Other crossers at the border include Ecuadorian military outfits, oil and lumber workers and palm plantation farm hands.²⁶⁵

²⁶¹ Criminal Code, "Reform Law," Publisher in the Official Register, No. 45, 23/06/05

²⁶² This penal reform divided the crime of trafficking into two separate crimes: on the one hand, it deals with forced services, slavery, sale and/or armed employment of people, recruitment for criminal aims as well as the sale, purchase or any transaction with the aim of labor exploitation; and, on the other hand, it deals with sexual exploitation operations. In addition, it includes to the targeting of organized crime outfits.

²⁶³ Internacional Labor Organization, ILO-Ecuador, Estudio rápido sobre causas, consecuencias, magnitud, mecanismos, circuitos, fines y otras importantes características de la trata de niños, niñas y adolescentes, Quito-Ecuador, May-2006. Unedited Document.

²⁶⁴ Sandoval Laverde Mariana, Final Draft Baseline: Dimensions, nature and environment of commercial sexual exploitation of children and adolescents in Ecuador, 2002, http://www.ILO.org.pe/pec/documentos/lb_final_esci_ecuador.pdf

²⁶⁵ Craig. Drugs and Crime, United Nations . Common Country Assessment – Ecuador. Common Country Assessment (CCA). United Nations plan for the Ecuadorian situation. Camacho Gloria, Women on the Border, pp. 35.

Further confirmation of this trend can be found within a study by CRS in the border provinces (Carchi, Sucumbíos and Esmeraldas), in which they have begun to identify cases of human trafficking over the Colombian border to use adult women in forced prostitution.²⁶⁶

Likewise, civil society organizations have established that in the Southern border region, Peruvian women have been trafficked into the country to be prostituted.

There Ecuadorian people who work as traffickers, sometimes they smuggle the women in, sometimes they tell the women that an affluent job awaits them, they bring them over the border, they confiscate their documents from them, and they force them to work in the bars.²⁶⁷

In confronting these cases, the inaction of the State to prevent, investigate, and censure trafficking in foreign persons in Ecuador is compounded by the flagrant violation of the provisions within the Convention on the Rights of Migratory Workers and other agreements aimed at the protection of human rights - in particular the Convention of Rights of the Child, the CEDAW and the Convention of Belen Do Pará.

With respect to the illegal movement of clandestine workers examined in this report, the extended use of the worker-gang system in the border zones has become a mechanism for the recruitment of foreign workers (Colombian and Peruvian) for work in the agricultural sector (on potato, banana and African Palm plantations). Confronted with this the inaction of the State has been confirmed by factual reports compiled organizations of the Catholic church located in the border regions:

In El Carchi, the way the worker-gangs function is well known by all, however the labor authorities have taken no steps to control or censure this practice.²⁶⁸

One must consider how the State has signed international treaties at a bi-national level, like the Permanent Migratory Statute, with Colombia, as well as the Plan of Border Integration. In analyzing the situation one must also take into account the Andean Community's Decision 545 on Labor Migration, which guarantees the rights of the worker population in border zones. These instruments have not manifested into concrete mechanisms for worker protection, meaning that these plans have not been placed into operation.

The present process of labor regularization with Peru, while it could be framed as a mechanism to fight exploitative labor practices, no evidence exists of the establishment of a solid policy that obliges banana companies to promote the regularization of workers.

Recommendations:

²⁶⁶ CRS, Border Project, Pastoral Structural Plan, Narrative Report, September - May 2005. Cases of human trafficking taken by the Pastoral Services of the Ipiales Area, Life, Justice and Peace.

²⁶⁷ Interview with Carlos Valdez, director of CIPSESEM, July-07

²⁶⁸ Migratory Pastoral Service of Tulcán, July 2007

- The Ecuadorian State must take steps to penalize and eradicate trafficking in person, with special attention toward protection the rights of the female population (children, adolescents, and adults).
- The State must establish effective controls in the Northern and Southern border regions of Ecuador, in order to prevent children and adolescents from being smuggled freely across the border without inspection, as is the case at the present time.
- The State must take specific measures to implement the National Plan Against Trafficking, to establish a solid framework for legal enforcement and sufficient budgetary support, and yield effective mechanisms for the pursuit and evolution of the anti-trafficking campaign, integrating Civil Society.
- The State must implement a system and model to assist victims of trafficking, which supports residential and mobile personal security for victims, as well as familial and community-wide reintegration of trafficked individuals. Such a program will make it possible for victims to access their rights; in particular guaranteeing the appropriate development of boys, girls and adolescents.
- The State must establish effective mechanisms to investigate and penalize the practice of smuggling migrant farmers into the country for work-gang labor, especially in the border zones. It should additionally create safeguards so the labor rights of migrant farmers are protected.
- The State must to establish a solid policy that integrates the process of labor regularization of Peruvian workers, with implementation of laws supporting improved working conditions to prevent exploitation of Peruvian laborers the banana plantations.
- The State must effectuate the border treaties signed by Ecuador and Colombia, in particular the Permanent Migratory Statute with Colombia, to guarantee the effective access to the rights therein delineated for the foreign population and for temporary migrant works. The border treaty implementation will contribute to an environment of respect for the labor rights of the population and will prevent further exploitation and stigmatization of the foreign worker population.
- The State must effectively implement Decision 545 of the Andean Community of Nations, as a mechanism to fight the clandestine smuggling of workers.

2.4.4 Right of Free Association and Unionization (Art. 26 – 40. Question 25 of the Committee)

The right of foreign workers to form associations and unionize is guaranteed constitutionally and legally. Nevertheless in actual fact, limitations on these rights exist:

In relation to the first right, diverse organizations of foreign residents exist within the country today, some legally recognized and others that exist in fact but are not recognized by the state. Additionally, in recent years, at least three organizations of Colombian people living in refugee situations (in Quito, Sucumbíos, and San Lorenzo) have obtained legal recognition and incorporation. Another is currently in the process of formation in Cuenca. In Machala a legally recognized organization for Peruvians is being formed, and another in Cañar has nearly completed a process of legal recognition.

The main limitation to this right is the administrative requirement that members of a recognized NGO have regular status within the country. This fact, given the high percentage of the population that has irregular status, seriously limits the right of this segment of the population to form associations, and constitutes an undue limitation on the constitutional right to free association, as codified in Art. 23.19.

As a mechanism to confront this limitation, the associations file their requests for legal recognition purporting to be composed only of foreign people who have documentation, or saying their members are both Ecuadorian nationals and foreign visa-holders. Once they obtain the legal recognition and incorporation they often integrate in partnership with foreign persons with irregular status.

It is necessary to note that associations formed by Ecuadorian retailers, have incorporated foreigners in irregular status into their organizations, granting them membership cards, a fact which facilitates the daily exercise of their work.

In Esmeraldas groups of Colombians are commonly admitted into associations in the informal sector, after paying the required fee. With such credentials they can labor calmly: as (caipiriñeros) bartenders, beer and fast food sellers on the beaches, etc..²⁶⁹

In relation to the right to organize unions, it is necessary to consider that the union movement in Ecuador faces a serious crisis that it has its antecedents in the labor reform laws of the 1990s, which established a pattern of labor precarity. The economic crisis of the 1990s caused the closing of numerous companies and massive worker layoffs. According to the president of La Central Ecuatoriana de Trabajadores Libres (The Central Ecuadorian Union of Free Workers - CEOLS), Jaime Arciniegas, as little as 2% of the PEA are organized in unions.²⁷⁰

From this framework, and under the limitations to formal work for foreigners, the right to unionization is almost nonexistent. In fact, the three main unions of the country, there are no registries of members by nationality, indicating the homogeneity of their membership. Many statutes and administrative directives of the unions and the companies continue to contain clauses that establish that to be an official or director of a union, one must be an Ecuadorian above the age of 18. As the director of CEOLS affirmed, only those with the legal right to work may become members of the unions; if unions were to accept unauthorized workers, the state would impose sanctions.

Finally, the State does not keep an updated registry of unions in the country. Accordingly the Ministry of Labor has 2800 registered unions, but it is presumed that a smaller number of unions actually exist. The Ministry of Labor does not keep data on the nationality of union members.

Recommendations:

²⁶⁹ Movilidad Humana, Esmeraldas, May -07

²⁷⁰ Interview with Jaime Arciniegas, president of CEOLS, Coalición, 26-06-07.

- **The State must completely guarantee the rights to free association for people with irregular immigration status, as neither the Ecuadorian Constitution nor international treaties endorse a limitation on freedom of association for unauthorized workers.**
- **The State must establish mechanisms to support unionization and activity within in the union locals, making sure access to unions is guaranteed regardless of migratory condition.**
- **The State must create training and sensitization campaigns with unions on the rights of migrant workers.**
- **The State must undertake reforms to the Code of the Labor, to allow for the full participation of foreign workers, even as union leaders.**
- **The unions must change to their statutes analyzing ways to promote the participation of foreign workers, incorporating people into the union regardless of their migratory condition.**

2.4.5 Right to Education (Art. 30,43a, 45^a Question 21)

The right to education indeed is a guarantee within Ecuador's constitutional framework. Nevertheless, in practice, accessing this right represents a serious difficulty for foreign children, particularly for those living with an irregular immigration status within the country.

An investigation on access to education for recognized and unrecognized Colombian refugees, a documented that 95.89% of the Colombian population of scholastic age are not in school; thus of 26,180 children and adolescents of scholastic age, only 1077 have managed it to matriculate into the Ecuadorian education system.

This same investigation established that problems that limit the access to education include: lack of resources, lack of papers, and discrimination. Little information is available to the foreign population on the school registration procedures; the ignorance of the school authorities about the disposition of international agreements and treaties on access to education; and obstacles that purposely perpetrated by school authorities who refuse access because of the lack of documentation and grade reports for refugee children:

The demand for school registration is overwhelming, so we only accepted to those who have documents as a rule²⁷¹

According to Jesuit Refugee and Migration Service,²⁷² the principal problems detected are as follows:

²⁷¹ Baseline cited.

²⁷² JRMS, Education Program, response to a consultation by Coalición, July/07.

- Restrictions on the right of the parents to give their children the type of education they consider adequate. Their economic situation forces them to go to state schools, where the accommodations are very limited.
- Children face school access discrimination because of their parents' undocumented status.
- Difficulties stemming from different evaluation methods in the country of origin and Ecuador.
- Discrimination, physical and psychological mistreatment by teachers, school authorities, other students, and even the parents of their Ecuadorian classmates.

The current education plan of the country (The Tenth Education Plan), does not include an analysis of migration nor does determine effective actions for supporting access to education and prevention of discrimination for the sons and daughters of immigrants. This demonstrates the absence of a methodological analysis of education gaps and highlighted by the absence of mechanisms of statistical data delineating the nationality of school-age children. This makes it difficult to design public policies for the school-aged population.

The only concrete manifestation of advancement in this area is that in October of 2006 the state issued a ruling guaranteeing educational opportunities for the refugee population.²⁷³ However, the ruling has not been carried out on a fundamental level to this day.

As far as the population with irregular immigration status, the State is considering the adoption of a policy to guarantee access to education, as educational authorities²⁷⁴ demand a passport or visa as a prerequisite for the registration of foreign children²⁷⁵; however, in accordance with the rule of law, school authorities need only ask for a birth certificate or an identity card (Art. 217). Furthermore the Code of Childhood and Adolescence prohibits the denial of the right of a student to participate on the basis of the condition of his parents (Art. 41).

In this way, without having a legal foundation and to prevent violations of obligations of the Convention of Migratory Workers and their Families, the Convention against the Discriminations in the Sphere of Education, and the Convention of Rights of the Child, the Ecuadorian State denies the majority of foreign-born children whose parents are irregular immigrants the right to the education.

Confronting this reality, civil society organizations, the Church and some local states²⁷⁶ have begun a process of legal intervention and training for teachers and authorities, explaining the migration and immigration reality. However the establishment of a nationwide policy is vital.

Recommendations:

²⁷³ Accord No. 455, R.O. 385,26-10-06

²⁷⁴ Directors of grade schools and high schools, under direction from the National Directorate for Schools.

²⁷⁵ www.educacion.gov.ec, Frequently asked Questions, legal recognition of foreign studies.

²⁷⁶ Municipio de Quito, a Project implemented by the Metropolitan House of Migrants.

- **The State must include the migration component in its education policy, explaining the themes of emigration, immigration and refugee protection. By definition, this policy must include effective measures to guarantee the right of access, continued matriculation and the promotion of education for the foreign population, without discrimination. It should include actions to improve the quality of education for foreign children, supporting integration, inclusion, and respect for diversity, solidarity and nondiscrimination. The State should create methodological and technical criteria that allow students to easily enter the appropriate grade level, taking into account their prior education in their countries of origin. The State should also establish a mechanism for statistically registering students by nationality.**
- **The State must make viable the implementation of the Ruling Promoting Access to Education for the Refugee and Migrant Population; and adopt administrative measures that guarantee access to education of for the population with irregular immigration status**
- **The State must establish effective mechanisms to prevent, investigate and penalize acts of discrimination that deny a child the right to education because of the nationality or migratory condition of the student.**

2.4.6 The Right to Identity. (Art. 29; Question 21)

As the State has confirmed, according to the Constitution birth-right citizenship is granted to any people who are born within Ecuadorian territory. This recognition implies that that the sons and daughters of foreign persons, who are born in Ecuador are Ecuadorian. This right does not impinge upon the right of these Ecuadorian born children or foreign nationals to also take refuge in the nationality of their parents.

In actuality, exercising of this right, particularly for the foreign-born persons who are living in irregular status, presents obstacles, caused by the restrictive application that the authorities read into the Law of Civil Registry. They often demand that the foreign-born parents who seek to register the birth of their child are themselves visa-holders.

Confronting this situation, civil society organizations have taken on the role of requesting birth certificates from the administrative authorities to register the birth of these Ecuadorian citizens and obtain for them the constitutionally recognized right to nationality. Nevertheless, there is no nationally enforced policy that guarantees this right. Thus in the city of Quito, there are differences in the criteria demanded for birth registration depending on the location of Civil Registry agencies within the city (the Civil Registry in the north will register Ecuadorian-born children of irregular parents while the Civil Registry in the city-center will not). This problem is becoming especially serious in border cities like Sucumbios, Orellana, and Tulcán, where in the right to national identity is regularly denied the children of irregular immigrants. The discretionary and ad hoc nature of these administrative practices is unconstitutional.

This situation is all the more disturbing in cases documented in which birth registration is denied to the child of an Ecuadorian mother and an foreign-born father with irregular status.

A Colombian man went to the Civil Registry of Ibarra to register his son of 11 months, born to an Ecuadorian mother within Ecuadorian territory. In the Civil Registry they refused to register the child because the father did not have a visa. The father entered Ecuador in the 2001 with a 12-VIII craftman's visa. At that time there was no judicial process for such visa holders. His wife is economically disadvantaged and she does not have the money to pay for a protection visa. He is currently trying to obtain naturalization based on his marriage to an Ecuadorian, but the naturalization fee is only waived for foreign women seeking naturalization through this method. As a consequence the father has no way to regularize his status and his son's birth remains unregistered.²⁷⁷

In the border regions, especially in Sucumbíos and Carchi, field work shows the presence of supposedly "foreign" nationals, even people who should be elders Ecuadorians, who were born in Ecuador, and who remain undocumented. Further investigation shows that other foreign people have lived in Ecuador for some years, and have Ecuadorian children, but cannot register them and are not themselves regularized. They are prevented from regularizing because of or by the distance or costs, thus even though the children are Ecuadorian they are registered in Colombia.

The majority of us are of Nariño [Colombian] origin, others have their roots in Caquetá. But we were born right here and we have been going back to Colombia to register. The majority of us have lived in Ecuador more than 20 years. Our families are composed of Colombians married who intermarried with Ecuadorians. Most of our children have been born in Ecuador. We need documents. Or our documents are expired because we lack money to renew the documents, they do not count us. They make us take out an Andean card which gives few rights and only allows us to stay a short time (1 - 90 days) if you do not renew your Andean card they do charge you 200 USD.²⁷⁸

The access to the civil registry in the country is quite limited, and, for that reason, last year the State launched a birth registration campaign offering free identity cards.²⁷⁹ However, access to this process was not permitted for undocumented foreign nationals, exacerbating the current situation.

Recommendations:

²⁷⁷ Case of CEDHU, right to education.

²⁷⁸ Herdoiza Cristina, Análisis of Human Rights and Refugee Work, Santa Barbara, Province of Sucumbíos, 2006, Integration and Self-Employment Project in the Colombo-Ecuadorian Border, financed by the U.S. office of Population Refugees and Migration - PRM with the technical assistance of FUPAD, implemented in Ecuador by Fundación Esquel.

²⁷⁹ The campaign was called "United for the right to identity", with great emphasis placed on registering rural and marginalized groups. It was coordinated by the National Council for Modernization, The National Council for the Child and Adolescent, The National Council for Women, the Directorate of the Civil Registry, and UNICEF.

- **The State, within the framework of fulfilling guarantees under the Constitution and its obligations under the Convention for Migratory Workers and their Families, must adopt a solid and uniform policy of civil registration that establishes the right of the sons and daughters of foreign nationals to obtain birth certification, regardless of the migratory condition of their parents**
- **The State must also adopt measures to facilitate the right to national identity for elders, located in border zones, who have not been able to access the civil registry. The State should also promote processes that facilitate the regularization of the foreign-born population who have familial ties with Ecuadorians**
- **The State must include within the population benefiting from birth registration campaigns, the Ecuadorian born sons and daughters of foreign people, regardless of their parents migratory condition.**

2.4.7 Right to Health (Art. 28, 43e, 45c; Question 18 & 26)

The right to the healthcare is another one of the rights recognized constitutionally, which has serious limitations in its real-life exercise, for both for the national population, and even more so for the foreign population.

Colombian people report difficulty in accessing public health services, as they fall victim to discrimination on account of their nationality (they regularly are placed behind Ecuadorian for service in a kind of two-tiered health system). Additionally they complain of difficulties with the costs of the services provided; Although the public health services are ostensibly free, healthcare workers often demand that Colombians pay for treatment and medicine. They confront hardships in their dealings with health personnel who lack sensitivity on migration issues.

According to a study conducted by INREDH, 85% of women with health problems have sought out medical attention; 2/3 in public clinics and 1/3 in private clinics. With respect to children, the numbers are more worrisome: only in 64% of the cases did parents seek medical attention for the children. Those who failed to obtain medical attention for sick children consistently mentioned cited lack of resources for the treatment costs, medicines, transportation to the facility as reasons for not getting health care. Parents instead sought to cure their sons and daughters with home remedies or shared medicine.

In regards to state policies, the State released declaration guaranteeing the refugee community access to public hospitals. However, employing a strict interpretation of this declaration, civil employees make access to health centers difficult for refugee applicants and people living in irregular immigration status.

Recommendations:

- **The State must establish a policy of access to services of public health for all the people, not discriminating against any class of people, regardless of their migratory condition.**
- **The State must establish programs of sensitization and information for health personnel on the rights of the migratory workers and their relatives.**
- **The State must promote mechanisms for effective healthcare access and support for medical insurance. These should be implemented at the local level for all people regardless of migratory condition.**

3 Status of Implementation of Convention Standards (Question 1)

Utilizing the Analysis Report of General and Administrative Characteristics developed by Coalición, we analyzed the progress and limitations of various characteristics systematically, presenting in chart form the degree of compliance with the Convention.

Acts	Progress	Limitations
Adequacy of Internal Legal Framework Constitutional Framework	The Constitution contains international standards for human rights protection.	Doesn't specifically address migrant workers. Limited standards for recognizing and protecting migrant worker populations (both national and foreign).
	Reforms the Free Maternity Law that guarantees maternity care for all women living in the country.	Secondary Legislation (ie Laws of Migration, Naturalization, Citizenship, Extradition, etc) standards are incompatible with the Convention. Reinforces concepts of selectivity, sovereignty, and criminalization regarding foreign populations. Appears to be in response to the period of military dictatorship.
Secondary Legislation	Regulations for access to education for refugees and Ecuadorian emigrants that cannot provide proof of education.	Remains without operative mechanisms for implementation. Does not recognize the right of irregular immigrants to access to the educational system.
	Reforms the Penal Code offenses in human and migrant trafficking.	Penal reform still falls below international standards.
	More than 40 proposed laws presented before the National Congress in the area of migration.	The presentation of proposals is driven by politics. The majority of proposals are centered around emigration. Those relating to immigration have restrictive laws and inflexible procedures.
International Agreements	Ratification of the majority of international human rights agreements	Difficulty with appropriate internal legal frameworks for the standards of the international agreement.
	Ratification of the International Agreement for the protection of rights for all migrant workers and their families.	Lack of acceptance for the Committee for Migrant Workers.

	<p>Subscription to the CAN agreements: Decision 545, Social Security and Consular Protection.</p> <p>Agreements to regulate migration flows with Spain.</p>	<p>The application of 545 of CAN and other agreements has not been made viable.</p> <p>Limited and conditional process, based on the policies of the issuing country, with limited guarantees/coverage.</p> <p>There is no permanent human rights policy.</p>
PUBLIC POLICY		
Administrative Structure	<p>There is a diverse administrative structure (allowing for various tasks): policy-making, regulation of foreigners, migration control, labor control, consular protection, protection and aid for Ecuadorian emigrants, prosecution of crimes and justice , constitutional guarantees, and rule-making.</p>	<p>The structure is disorganized and shows little capacity in this topic area. There are overlapping functions.</p> <p>Migrant policy has yet to be defined, planned, or followed.</p>
Plans and agendas	<p>Human Rights Plan with an Operative Plan for emigrants, immigrants, refugees, and stateless persons.</p> <p>Plan for Foreign Policy.</p> <p>Plan against human trafficking.</p> <p>Plan Ecuador.</p> <p>All stem from the Convention</p>	<p>Operative, technical, and budget difficulties in the execution of plans.</p> <p>Limited, precise actions with little tracking.</p> <p>There is no global migration policy. It's approached from disparate areas and perspectives.</p>
Regulation Programs	<p>3 Processes have begun: one general process for foreign workers, another for Colombian workers, and one for Peruvian workers.</p>	<p>The state has an undeveloped policy agenda regarding social issues for migrants or other vulnerable, mobile populations (health, social welfare, education, work, childhood & adolescence.)</p> <p>Restricted to the regulation of formal labor. Not widely utilized. Requirements are hard to fulfill, short-term and limited coverage, minimal results. Doesn't address needs and reality of the irregular migrant population.</p>
Consular Protection Programs	<p>Increase of consular offices in countries with the highest Ecuadorian emigrant populations.</p>	<p>Restricted to issuing documents, with very little ability to attend to problems Ecuadorians face abroad.</p> <p>An absence of effective action in transitional/developing countries.</p>

Assistance programs for migrant workers	Selection of Migrant Workers.	Lack of tracking and monitoring of consular action by the Minister of Foreign Relations. Limited to Spain. Low coverage and a minimal monitoring in destination countries.
	Creation of the Office of Labor Migration in the Ministry of Labor.	Limited to the processing of labor authorization for obtaining work visas.
	Migrant Houses or Assistance Programs in local states (Quito, Cuenca, Sucumbíos)	Almost completely restricted to emigration issues, with limited recourses.
	Program of voluntary return (Developed by IOM)	Dependent on international financing.
Training programs for civil servants on convention standards.		Focused on OIM work. A policy for facilitating return remains undefined. The State has not developed training programs for civil servants about Convention standards despite an obvious lack of awareness on the topic.
Programs for public distribution of Convention standards for the public	Last year a campaign was developed against illicit migrant trafficking and human trafficking (National Institute for Children and Families)	The State has not designed a program for distribution of the standards.
	Some progress in the distribution of convention standards—so far only via publications, made by NGO's.	State and civil society efforts have focused on emigration, even though sustainable immigration processes still don't exist.
	Smaller initiatives by local states.	Distribution programs for Selection Unit are very limited and narrowly distributed.
	Orientation to the Selection Unit for migrant workers.	

This analysis demonstrates that the state's progress in applying standards established by the Convention to the national framework has been extremely limited. In fact, the legal framework continues to respond with logic based on national security and has failed to keep the principals established by the Convention in mind. On the other hand, the state has agreed to joint initiatives, requirements and migration policies of receiving nations contributed through international cooperation and the initiatives of civil society organizations. The situation is critical, considering the magnitude of immigration and emigration in the country and the transformations that this is generating. Appropriate efforts to avoid negative impacts of increased immigration or emigration to social cohesion are necessary.

There is more evidence that an imbalance exists in the state's actions regarding migration. The state has focused its few acts and initiatives on emigration and has either

avoided immigration or handled immigration issues restrictively. In this last area state policies reinforce concepts of national security, selectivity, discrimination, and criminalization—concepts incompatible with the principals and contents of the Convention.

The process of accommodation requires not only modifications for the legal framework but also development of concrete measures for designing public policy. In this sense, the degree of institutional dispersion is troubling with respect to migration issues; the current overlap of functions between the Advisory Council for Migration Policy and the National Secretary for Migration maintains a circuitous absence of an effective, unified, and coordinated forum for migration policy. And there has been a poor stateal response to proposals of civil society.

Finally, the distribution and training of the contents of the Conventions has been virtually nonexistent. There is a lack of training for public officers who are in charge of the implementation of Convention standards, and thus a lack of public awareness about rights under the Convention. There is also a general ignorance about the mechanisms and requirements necessary for exercising those rights. Thus the need for the creation of a strong distribution and training program, along with a regulated assimilation and policy process, constitute the primary limitations in the Ecuadorian state.

This analysis demonstrates the necessity of a defined migration policy that incorporates, in equal terms and under coherent principles, the topics of emigration, immigration, refugees, and forced internal displacement.

This policy should be a priority on the political, economic, and social agenda of the nation. The policy must devise urgent interventions in the following areas:

- Reform and expedite of new laws for Migration and Foreign Affairs and other linked issues, incorporating the standards for international protection as established by the Convention and other human rights documents.
- Reform the Work Code to allow the adoption of the principles and effective protection mechanisms for migrant workers and their families.
- Define a single national application for the definition of migration policy, which combines the now separate State and Civil Society agencies
- Design and implement a reliable statistical registry of migration trends, which can determine indicators of emigration and immigration, refugees, and forced internal displacement and be implemented by different State agencies. Immediately modify the practices and mechanisms of migrant detention, deportation, and exclusion, in order to fulfill international human rights standards.
- Define and implement a strong regularization policy that is accessible and tailored to the necessities and realities of the irregular migrant worker population.
- Consolidation of an effective process for consular protection that guarantees Ecuadorian migrant workers' rights while they are working outside of Ecuador.
- Establish an effective policy that assists relatives of emigrants who have gone abroad, with special emphasis on abandoned relatives.

- **In-depth analysis of the campaigns and policies of prevention, investigation, and sanctions for human trafficking and migrant trafficking, in order to consolidate an effective model for assistance and protection of trafficking victims.**
- **Develop and consolidate an effective model for assistance and protection for victims of trafficking and sexual exploitation, particularly women, children, and adolescents. Specialized centers should be opened in cities throughout the country and operated in coordination with civil society organizations who work in that field.**
- **Incorporate workers' relatives living in the country in the identification and registration campaigns, with an emphasis on children, adolescents, women, and the elderly.**
- **Incorporate migration into the State's Social Agenda and the Operative Plans for Labor that is being presented, especially in the plans for Childhood and Adolescence, Foreign Policy, Human Rights, and Equal Opportunities for Women.**
- **Develop processes for correlation and merging of national and local state plans.**
- **Implement a System of Information, Orientation, and Consultancy for Ecuadorian and foreign migrant workers.**
- **Design and implement a national campaign against discrimination, exclusion, and xenophobia.**
- **Establish an education policy that provides for effective access and permanence in the education system for children of emigrants, immigrants, refugees, and displaced persons, without any discrimination. This policy should also promote a high quality education based on the values of solidarity, integration, and respect for diversity.**
- **Design a state intervention policy that values the work of public servants and discourages emigration processes that distinguish between individuals' professional recognition and the legal obligation to guarantee quality public services.**
- **Initiate investigation and migration policy regarding: the transitional worker population; migrant workers detained for common crimes; foreign children and adolescents working in banana farms, flower farms, mines, other types of labor; and undocumented elderly foreigners.**
- **Create a process for training about and distribution of Convention contents among state employees and the general public.**
- **Implement mechanisms for repair and functioning of adequate locations that provide consultation and assistance for migrant workers and their families.**

FINAL CONSIDERATIONS

The socio-economic situation of the country and the process of globalization of the economy substantiates the view that the current level of emigration, immigration, and migrant worker flows will remain a reality for the country, and in fact will likely increase.

This reality demands that Ecuadorian state and society learn to live with the dynamics of migration and adopt a definition of migration policy that fulfills our international obligations and incorporates a focus on human rights as a fundamental driving force.

The adoption of this focus necessitates adapting the internal legal framework to international standards of protection, carrying out a plan based on the creation of rights and developing a process for wide distribution and awareness of the standards of the Convention, as well as other national and international protection guidelines.

Coalicion considers this evaluation of the degree of compliance with Convention standards to be a special opportunity for the State to review its acts, to balance and update its obligations and incorporate specific measures that allow for substantial progress in improving the treatment and protection of all migrant workers.

This process should be adapted to the process of the Constitutional Assembly currently underway in the country, and the construction of a development model based on the State plan. Within this framework, Coalicion calls upon the Ecuadorian state so that through its highest mechanism of constitutional control, it may be vigilant in ensuring that the principals and obligations established by the International Conventions for the protection of migrant workers and their families are effectively respected within these processes.

And we request at the same time that the Committee for Protection of Migrant Workers, in its recommendations, urge the State to take a solid position on the topic of migration the current situation, requiring all appropriate decisions and actions.

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