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

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COMMITTEE ON THE PROTECTION OF THE
RIGHTS OF ALL MIGRANT WORKERS AND
MEMBERS OF THEIR FAMILIES

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 73 OF THE CONVENTION**

Initial reports of States parties due in 2004

ECUADOR*

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Introduction

1. In accordance with article 73, paragraph 1, of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Ecuador, as a State party, has the honour to submit its initial report on the legislative, judicial, administrative and other measures taken to implement the provisions of this Convention.
2. Legislative approval of the Convention (identified as No. R-23.129) was given on 18 October 2001, and the executive ratified it by Decree No. 2120-A of 23 November 2001, which was published in *Official Gazette* No. 471 of 11 December 2001. The text of the Convention was published in *Official Gazette* No. 133 of 25 July 2003 once the Convention had entered into force at the international level.
3. As migration is among the priorities of Ecuador's foreign and domestic policy agenda, strategies have been adopted and coordinated action has been planned to address migration issues.
4. Given Ecuador's history, international migration needs to be analysed from two perspectives: one related to immigration and the other to emigration, although at times the two overlap. A brief historical review of international migration shows that, unlike in other countries of the Southern Cone where low population density in vast territories prompted the implementation of policies to attract immigrants, there was no great influx of immigrants to Ecuador in the early twentieth century. However, the substantial migration inflows of the 1970s changed this situation.
5. Emigration, on the other hand, initially took place in the context of social trends and demographic movements involving the upper levels of Ecuadorian society; later, emigration was spurred by the socio-economic conditions arising from Ecuador's historical circumstances, such as lack of opportunities, shortage of resources and the contrast between standards of living in developed and developing countries. Furthermore, the social conditions created by the first migratory movements, where pioneer emigrants established social networks that facilitate the outflow of migrants, have made such movements more common.
6. At the core of this two-way phenomenon - the in- and outflow of persons - is the human being. Hence it is important for the international community and individual States to take measures to guarantee the human rights of migrant workers, and for States to ensure not only their survival but also equal opportunities for those who migrate in search of better living conditions.
7. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is an important step forward in the field of standard-setting, in that it gives precedence to the right to life and dignity as overriding principles in the territory of States parties to the Convention.

I. INFORMATION OF A GENERAL NATURE

A. General population and unemployment data

1. Population size and growth

8. Demographic trends in Ecuador between 1950 and 2001 are characterized by a decline in the fertility rate from the early 1970s onwards and by an increase in outward migration, which has increased during the past decade.

Table 1

Total population by area, and population growth rate (1950-2001)

Census year	Total population	Urban areas		Rural areas	
		Population	%	Population	%
1950	3 202 757	913 932	28.5	2 288 825	71.5
1962	4 564 080 ^a	1 612 346	35.3	2 951 734	64.7
1974	6 521 710	2 698 722	41.4	3 822 988	58.6
1982	8 138 974 ^a	3 985 492	49.0	4 153 482	51.0
1990	9 697 979 ^a	5 345 858	55.1	4 352 121	44.9
2001	12 156 608	7 431 355	61.1	4 725 253	38.9

Average annual growth rates (%)

Census year	Total population	Urban areas	Rural areas
1950-1962	2.95	4.73	2.12
1962-1974	3.09	4.46	2.24
1974-1982	2.62	4.60	0.98
1982-1990	2.19	3.67	0.58
1990-2001	2.05	2.99	0.75

Source: National Statistics and Census Institute (INEC), Analysis of the final results for the Republic of Ecuador, Fifth Population Census and Fourth Housing Census, 1990; Sixth Population Census and Fifth Housing Census, 2001, final results, national summary.

^a Includes population estimate for those areas where no census operation could be carried out.

9. In the most recent period, 1990-2001, fertility and mortality continued to decline, while international migration grew to such an extent that its net effect changed from being non-existent to becoming a contributory factor in population growth.

Table 2

Breakdown of the total population by age group (1950-2001) (%)

Age group	Census					
	1950	1962	1974	1982	1990	2001
0 to 14 years	42.5	45.0	44.5	41.9	38.8	33.2
15 to 64 years	54.0	51.8	51.7	54.1	56.9	60.1
65 years and over	3.5	3.2	3.8	4.0	4.3	6.7
National total	100	100	100	100	100	100

Source: INEC, Analysis of the final results for the Republic of Ecuador, Fifth Population Census and

Fourth Housing Census, 1990; Sixth Population Census and Fifth Housing Census, 2001, final results, national summary.

10. According to the Sixth Population Census (2001), Ecuador had 12,156,608 inhabitants, of whom 4,585,575 (37.7 per cent of the total population) were economically active.

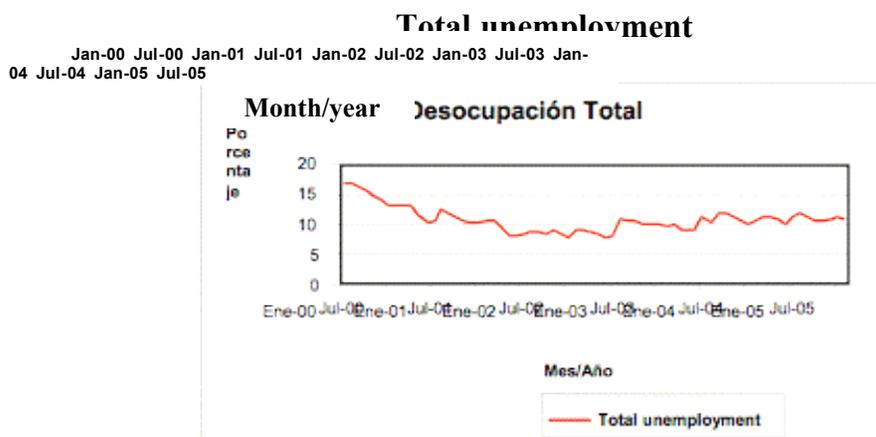
2. Unemployment

11. The total unemployment rate was at its highest level in January 2000 (16.8 per cent), as a result of the economic crisis. The rate declined steadily over the following years, but never dropped below pre-crisis levels.

12. The lowest percent was in September 2002 (7.7 per cent). In August 2005, the total unemployment rate was 11 per cent.

%

Table 3



Source: Central Bank of Ecuador, studies carried out in the cities of Quito, Guayaquil and Cuenca.

13. The National Statistics and Census Institute (INEC) provides the following information on trends in unemployment for the period 1990-2002:

Table 4

Trends in unemployment in Ecuador (1990-2002) (%)

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Total unemployment	6.1	8.5	8.9	8.3	7.1	6.9	10.4	9.2	11.5	14.4	9.0	10.9	9.2
Open unemployment	4.7	5.7	6.2	6.4	5.4	5.4	8.3	7.1	8.7	10.1	5.9	5.9	5.5
Hidden unemployment	1.4	Year		1.9	1.7	1.5	2.1	2.1	2.8	4.3	3.1	5.0	3.7

Source and compilation: INEC.

Table 5

Total unemployment



Source: INEC.

14. It emerges that the unemployment rate was at its highest level in 1999, when it reached 14.4 per cent; this increase reflects the rise in the number of redundancies. In March 1998, of the total number of employees made redundant, 36.6 per cent had lost their job following the liquidation of the company, summary dismissals or termination of a work contract; in December 1991, this proportion increased to 60.1 per cent. [\[1\]](#)

15. The rate dropped sharply in 2000 and then rose to 9.2 per cent in 2002. However, there has been no improvement in total unemployment figures as compared with the first half of the 1990s.

16. In the second half of the 1990s, unemployment increased, followed by a marked economic recovery starting in 2000. However, this growth remains insufficient and depends on the price of oil exports and on emigrant remittances. The resulting fluctuating growth offers no stability for investment and fails to reduce the high rates of unemployment and informal sector employment.

Table 6

Main indicators (2000-2004)

	2000	2001	2002	2003	2004*
Growth of GDP	0.9	5.1	3.4	2.7	5.4
Urban unemployment rate	14.1	10.4	8.6	9.8	11.0
Informal sector employment rate	51.6	NA	55.0	56.5	NA
Price index movements	-7.7	37.7	12.6	7.9	3.0

* Third trimester. Based on official information: taken from the ILO 2004 *Labour Overview: Latin America and the Caribbean*.

B. Quantitative and qualitative information on the characteristics and nature of the migration in which the State party is involved

1. Migration indicators

Table 7

Arrivals and departures of Ecuadorians and foreign citizens, 1998-2005

Year	Ecuadorians			Foreign citizens		
	Arrivals	Departures	Difference	Arrivals	Departures	Difference
1998	234 250	274 995	-40 745	471 009	349 363	121 646
1999	294 547	385 655	-91 108	517 670	408 646	109 024
2000	344 052	519 974	-175 922	627 090	444 926	182 164
2001	423 737	562 067	-138 330	640 561	464 781	175 780
2002	461 396	626 611	-165 215	682 962	487 546	195 416
2003	458 971	613 106	-154 135	760 776	519 801	240 975
2004	525 578	599 304	-73 726	816 194	629 497	186 697
2005	598 722	670 799	-72 077	860 784	682 812	177 972
			-911 258			1 389 674

Source: Department of Migration.

Total number of Ecuadorians departing: 911,258

Total number of foreign citizens arriving: 1,389,674

17. As the official figures show, in Ecuador as in other Latin American countries, the balance of international migration (the difference between the number of immigrants and emigrants) has been negative. Nonetheless, catering for large numbers of immigrants has placed an enormous economic strain on Ecuador as a developing country, since a significant number of immigrants have been unskilled, unproductive workers, whereas emigrants from Ecuador have tended to be potentially productive, often highly skilled workers.

18. Moreover, the negative migration balance as it emerges from the official records does not reflect the full reality, since the figures reflect only legal immigration, there being no exact figures for the number of persons who have entered and remained in Ecuador illegally. According to information from the National Statistics and Census Institute, international immigration makes a significant but as yet unquantified contribution to demographic growth in Ecuador.

2. Immigration

19. In recent years, Ecuador has received internationally significant levels of immigration. Between 1997 and 2002, of an estimated 3,468,784 foreign citizens who entered Ecuador, only 2,557,372 are recorded as having left the country, which implies that a significant number of foreign citizens must have remained in Ecuador after 2002, the balance being an estimated 911,412 immigrants.

20. Colombians and Peruvians account for the largest group of immigrants to Ecuador, since the dollarization of the Ecuadorian economy attracted workers from neighbouring countries. Peruvian workers are mostly employed in banana plantations on the Ecuadorian coast and in the construction industry. In general, they work from Monday to Friday, returning to their own country at weekends. Illegal immigration from Colombia is a greater concern, since Colombians are driven to flee by violence as well as by poverty. According to statistics from the Ecuadorian Refugee Office, between 2000 and 2006, out of 41,820 asylum applicants, 12,346 applicants were recognized as refugees. [\[2\]](#)

21. According to information provided by the Andean Community of Nations, the minimum wage in Peru up to 2004 was 460 soles, or \$135. The minimum wage in Colombia in 2004 was 358,000 pesos. The Andean Community of Nations does not give an equivalent for this figure in dollars, but an average exchange rate of

2,290.2 pesos to the dollar gives a minimum wage of \$156 in Colombia. ^[3] The minimum wage in Ecuador is \$174.

22. As these figures show, there is no great difference between the minimum wage in dollars of the three countries, but it is certainly possible that illegal immigrants, whether Peruvian or Colombian, leave their country because they are not receiving the minimum wage there or, worse, because they are unemployed, and are thus attracted to Ecuador where they can receive their wages in dollars.

23. Colombia is also a country with a strong tradition of migration; Colombians make up the largest group of South American immigrants in the United States of America, and a similar pattern has been observed with regard to Ecuador and Venezuela.

24. In view of these circumstances and the socio-economic situation in the country, Ecuador urgently requires economic cooperation in order to cater adequately to the needs of Colombian immigrants.

3. Emigration

25. In terms of emigration from Ecuador, the 1999 economic crisis prompted many Ecuadorians to seek a better standard of living elsewhere. The hourly wage in the United States is \$5.15; ^[4] in Spain, the minimum wage is €17.1 a day, €513 a month or €7,182 a year, and for domestic servants paid an hourly wage, €4.01. ^[5]

26. While exact figures are not available, it is estimated that, between 1997 and 2002, 1,976,747 Ecuadorians emigrated to other countries in America and 1,781,055 returned, leaving a balance of 196,692 Ecuadorians who settled in those countries.

27. Ecuadorians constitute the second largest group of South American immigrants in the United States of America. The United States census figures cannot be taken to represent the total number of immigrants ^[6] since illegal immigrants, anxious about their irregular status, tend to evade the census or provide incomplete information; the actual number of Ecuadorian immigrants in the United States could be significantly higher.

Table 8

The Ecuadorian population in the United States, 1990-2000

	1990 census	Mumford estimate, 1990*	2000 census	Mumford estimate, 2000*
Connecticut	2 947	3 041	7 703	10 596
Illinois	8 659	8 897	12 060	18 069
California	26 953	27 858	18 118	33 332
Florida	14 679	15 230	23 939	35 943
New Jersey	27 572	28 701	45 392	66 370
New York	89 838	92 569	123 472	177 957
United States	191 198	199 477	260 599	396 400

Source: Logan, 2001, United States Census Bureau, 2000.

* The Mumford estimates are produced by the Lewis Mumford Center for Comparative Urban and Regional Research, State University of New York, Albany.

28. During the period 1997-2002, 705,634 Ecuadorians left for the European continent and 263,103 returned, leaving a balance of 425,031, equivalent in real terms to approximately 10 per cent of the economically active population. These migration flows increased significantly at the end of 1999.

29. The Spanish National Statistical Office states that 497,799 Ecuadorians are officially registered with the municipalities, which register both legal and illegal immigrants. According to statistics provided jointly by the Ministry of Labour and the National Statistical Office, 166,448 Ecuadorians do not have a permit to reside or work in Spain. Following the recent amnesty, 331,351 Ecuadorian citizens are legally resident in Spain. [\[7\]](#)

30. According to information from the National Institute of Statistics of Italy (ISTAT) and the Caritas Statistical Immigration Dossier, in 1998 there were 4,908 Ecuadorians in Italy, and in 2005 the figure was 53,220. Again according to ISTAT, in January 2004, 34,292 Ecuadorians were regularized under the Bossi-Fini Act. According to a report in the daily newspaper *El Universo*, 30,000 Ecuadorians live in Genoa alone, so that the total figure for Italy could easily exceed 100,000.

31. The records of Ecuadorians registered abroad, according to the Office of the Director-General for Ecuadorians Living Abroad, show that 292,260 Ecuadorians are living abroad around the world. [\[8\]](#)

32. The results of the emigration of Ecuadorians to developing countries are not encouraging, owing to an exclusionary attitude associated with ethnic factors and a disproportionate increase in restrictive measures.

C. Description of the constitutional, legislative, legal and administrative framework governing the implementation of the Convention and of bilateral, regional or multilateral agreements relating to migration

1. General legislative framework for the protection of human rights

33. As regards international migration and the integration of immigrants, the Ecuadorian constitutional framework is compliant with the provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, since the Constitution guarantees to all those resident in Ecuador the rights explicitly established therein, as well as the rights set forth in the international instruments in force in Ecuador, such as the Convention.

34. The Political Constitution of Ecuador, which has been in force since 1998, introduced a number of overriding principles, which are in line with international law. Article 17 stresses that “the State guarantees to all its inhabitants, without discrimination, the free and effective exercise and enjoyment of the human rights set forth in this Constitution and in the declarations, covenants, agreements and other international instruments in force. The State shall implement measures, including permanent and short-term programmes and plans, with the aim of ensuring the effective enjoyment of these rights”.

35. The reference to “all its inhabitants” in the Constitution implies equal conditions for Ecuadorian and foreign citizens, reinforcing the international principle of non-discrimination.

36. Article 13 of the Constitution states that “foreigners shall enjoy the same rights as Ecuadorians, with the limitations set forth in the Constitution and in the law”. These limitations do not involve discrimination on grounds of a person’s origin; the only rights not accorded to foreign citizens are political rights.

37. In conformity with the Constitution, the Labour Code provides that immigrants are entitled to work, and states that “any alien wishing to apply for or renew the relevant visa and registration in the Register of Aliens in order to enter Ecuador with the intention of establishing an employment relationship with a natural or legal person resident in Ecuador or another country, and any alien wishing to switch into this employment category and status having already entered Ecuador, shall first obtain a certificate issued by the National Director of Employment and Human Resources of the Ministry of Labour and Human Resources authorizing the intended employment, and confirming that a grant of leave to enter or remain in Ecuador would not undermine national employment and human resources policies”.

38. The law on migration is contained in the Aliens Act, which describes the various types of immigration status and category, and the Migration Act, which sets out the structures of and coordination between the services that regulate the entry and exit of citizens and aliens from Ecuador. Ecuador recognizes that domestic legislation has not yet been brought into line with the Convention, which explains why some provisions in the aforementioned legislation are obsolete.

39. This legislation has the following aims:

(a) To organize and manage the entry and exit of Ecuadorian and foreign citizens by inspecting documentation, and enforcing the law and international agreements on the residence and activities of foreign citizens in Ecuador;

(b) To prevent and eliminate clandestine migration; record entries and exits; maintain statistics on Ecuadorian and foreign citizens; prevent illegal entries or exits; prevent the exit of vessels and vehicles that have not undergone the relevant inspections; and monitor the stay of foreign citizens in the country etc.;

(c) To establish rules for international transit; determine which medical examinations are required of foreign citizens; examine and inspect persons and vehicles; implement regulations on the exclusion of foreigners; and apply regulations on the status of asylum-seekers pending consideration of their application by the Consular Department;

(d) To arrange for the removal of foreign citizens who have come to the attention of immigration control, including persons refused entry, persons convicted in Ecuador in a final judgement, or offenders who cannot be tried in Ecuador because they are outside its jurisdiction;

(e) To prohibit the entry of minors unless accompanied by their legal guardian.

40. A brief outline of the domestic legislation on immigration status and categories, and of offences related to migration, is given below.

Immigration status

41. Article 8 of the Aliens Act provides that aliens shall be considered to have either permanent or temporary immigration status.

Categories of permanent immigrant

42. Article 9 of the Aliens Act states that any alien who enters the country lawfully and in accordance with the rules, with the intention of settling in order to pursue an authorized activity specified in one of the following categories, shall be considered a permanent immigrant:

(a) Immigrants intending to reside in Ecuador and to support themselves from their savings, the income produced thereby, or any other permanent source of income to be transferred to Ecuador, must meet the following requirements:

- (i) The immigrant shall demonstrate receipt of a minimum sum of \$800 in the form of income from abroad;
- (ii) If family members are included in the application, this sum shall be increased by an additional \$100 per person;

(b) Permission to enter may be granted for the purpose of investing capital in the acquisition of real estate, or of a certificate, securities or bonds issued by the State or a national lending institution. As a surety for the investment, the immigrant shall deposit a sum of \$2,000 in the Central Bank of Ecuador to be placed at the disposal of the Consultative Council on Migration Policy. The minimum capital investment required for this visa is \$25,000; an additional \$500 is required for each family member;

(c) Permission to enter may be granted for the purposes of a capital investment in any branch of industry, agriculture, livestock farming or the export trade, provided that the investment is stable and is not deposited in a joint stock company. Together with the visa application, the immigrant shall submit the company's constitution, duly registered in the Mercantile Register, or a certified copy of the increase in the company's capital, also registered in the Mercantile Register. Alternatively, for investments on an individual basis, the trade licence and the tax registration document shall be submitted. A minimum investment of \$30,000 is required to qualify for this visa. A \$3,000 deposit shall be placed with the Central Bank of Ecuador under the name of the Consultative Council on Migration Policy, and shall be forfeited to the exchequer if the investment is not effected within 180 days;

(d) An individual wishing to assume a permanent managerial, technical or specialist position with a business, institution or person established in the country, requires one of two types of visa:

- (i) For strictly managerial positions such as managing partner, general manager, company director and officers authorized to represent the company in legal, judicial or extrajudicial contexts; holders of the visa do not need a work permit, in accordance with article 314 of the Labour Code;
- (ii) In the case of highly skilled technical experts, the visa clearly relates to employment and the application shall be accompanied by the relevant work permit referred to in article 569 of the Labour Code.

43. The regulations applicable to the Aliens Act refer to two further categories:

(a) Persons who belong to religious organizations or orders that operate in accordance with the *Modus Vivendi* between Ecuador and the Holy See (Supreme Decree No. 212, promulgated in *Official Gazette* No. 547 of 23 July 1937);

(b) Foreign press correspondents duly established in the country.

44. The following requirements must be met for the visa to be granted:

- (a) The application must be submitted by a natural or legal person established in Ecuador;
- (b) Technical experts or professionals are required to provide the work permit referred to in article 569 of the Labour Code;
- (c) The application must be accompanied by:
 - (i) Evidence of appointment or power of attorney;
 - (ii) Documents attesting to the legal existence of the company; and
 - (iii) A certificate from the Office of the Superintendent of Corporations;
- (d) An immigrant belonging to a religious organization or order shall provide documentary evidence in the form of a certificate issued by the organization's authorized signatory;
- (e) Foreign press correspondents must produce only the accreditation issued by the National Secretariat for the Media (SENAC);
- (f) The authorized representatives of natural or legal persons shall bear any costs arising from the departure of the foreign citizen and his or her family from Ecuador.

45. Permission to enter may be granted for the purpose of practising a liberal or technical profession in a manner consistent with the standards established in the Higher Education Act. To qualify for a visa under this heading, applicants must provide evidence of their professional qualifications. The provisions of international conventions and agreements shall be taken into account.

46. As regards spouses or relatives of the second degree of consanguinity of an Ecuadorian citizen, or of a foreign citizen who holds a visa under another permanent immigration category, article 9, paragraph 5, provides that visas may be granted to practise a liberal or technical profession according to the rules set forth in the Higher Education Act; applicants must provide evidence of their professional qualifications, and the provisions of international conventions and agreements must be taken into account. The following requirements must be met for the visa to be granted:

- (a) The visa application must be submitted by the person with whom the immigrant intends to reside as an economic dependent. The applicant is required to provide evidence of Ecuadorian nationality or residence, and of financial solvency;
- (b) The marital or family relationship must be established by a certificate lawfully issued by the authorized body;
- (c) Foreign citizens who acquire this status by virtue of marriage shall lose their status in the circumstances set out in article 104, sections 2 and 4, of the Civil Code, unless the foreign citizen was the innocent party to a divorce decreed on any of the grounds contained in article 109 of the Civil Code.

47. Foreigners admitted under any category of article 10, having registered with the Office of the Director-General for Aliens, are entitled to obtain an identity card. Persons with the status of permanent immigrant may not absent themselves from the country for more than 90 days during the first few years.

48. Permission may be granted for the purpose of engaging in lawful activities not specifically mentioned in the categories set out in this article. In accordance with the relevant regulations and subject to the approval of the Consultative Council on Migration Policy, the planned activities must guarantee a steady income that is sufficient to maintain the applicant and his or her dependants. No applications have in fact been submitted to the relevant authorities under this heading to date.

Categories of temporary immigrant

49. Article 12 of the Aliens Act provides that any alien resident in another State who enters Ecuador lawfully and in accordance with the rules in order to pursue an authorized activity in one of the following categories, with no intention of settling in the country, shall be considered a temporary immigrant:

(a) Members of the diplomatic and consular services, senior international civil servants from international organizations of which Ecuador is a member, representatives of special missions accredited with the Government of Ecuador, and members of their immediate families;

(b) Senior officials of other States and persons holding diplomatic passports, and their closest aides;

(c) The private employees and domestic servants of persons in the above-mentioned categories, and members of their immediate families;

(d) Persons displaced as a result of war or political persecution in their country of origin, for the protection of their life or liberty, and members of their immediate families;

(e) Students wishing to commence, complete or further their education in State institutions or State-approved private institutions, and members of their immediate families;

(f) Highly skilled technical experts or specialized workers hired by businesses, institutions or persons established in Ecuador to complete temporary assignments in their area of expertise, or for purposes of industrial training, and members of their immediate families;

(g) Missionaries, volunteers or members of religious organizations or orders recognized in their country of origin and in Ecuador who wish to engage in pastoral, teaching or evangelical activities, and members of their immediate families;

(h) Persons assisted by national organizations lawfully established with the aim of developing cultural exchange programmes, and members of their immediate families;

(i) Short-term visitors for lawful purposes related to tourism, sports, health, studies, science or art, or to engage in business activities that do not require a concurrent importation of goods. This category also includes foreigners who do not fall under one of the other categories of temporary immigrant described in this article, subject to confirmation by the Consultative Council on Migration Policy that their presence in the country is legitimate and in accordance with the relevant regulations;

(j) Persons in transit, in the following subcategories:

(i) Persons who enter transit areas during an operational stop by a seagoing vessel or aircraft, and who intend to continue on their journey in the same vessel or aircraft or in another one provided by the same company;

(ii) Individuals in transit through Ecuador en route to their country of destination, whether they are persons intending to board a vessel destined for another State, or drivers providing international land transport services;

(iii) Short-term visitors for the purposes set out in section IX of article 12 of the Aliens Act, for a period not exceeding three months in any given year;

(iv) Persons resident abroad in towns close to the Ecuadorian border who need to travel on a daily basis to towns in neighbouring regions of Ecuador;

(k) Short-term visitors for lawful purposes such as business, investment, entrepreneurial, commercial, industrial or professional activities, who need to be able to enter Ecuador frequently.

50. Persons admitted under categories (a), (b) and (c) of the previous paragraph, in accordance with the Act on Exemptions, Privileges and Immunities of Diplomatic and Consular Officials and the Staff of International Organizations, enjoy immunity from national jurisdiction for as long as they retain the same immigration status and category.

51. The regulations issued under the Aliens Act add the following categories of temporary immigrants:

(a) Foreign press correspondents who establish themselves in the country, prior to accreditation by the National Secretariat for the Media. They are not granted immunity from national jurisdiction;

(b) Persons displaced as a result of war or political persecution in their country of origin, for the protection of their life or liberty;

(c) Students wishing to commence, complete or further their education in State institutions or State-approved private institutions, and members of their immediate families;

(d) Highly skilled technical experts or specialized workers hired by businesses, institutions or persons established in Ecuador to complete temporary assignments in their area of expertise, or for purposes of industrial training, and members of their immediate families;

(e) Missionaries, volunteers or members of religious organizations recognized in their country of origin and in Ecuador who wish to carry out pastoral, teaching or evangelical activities;

(f) Persons assisted by national organizations lawfully established with the aim of developing cultural exchange programmes;

(g) Short-term visitors.

Asylum-seekers and refugees

52. The conditions applicable to asylum-seekers or refugees are determined by international treaties and conventions. Asylum shall not be granted if the immigrant arrives from a country other than the country of persecution or unrest, except in cases of direct transit.

53. The treaties on diplomatic asylum shall be respected in all cases. The following provisions apply:

(a) The Ministry of Foreign Affairs shall determine the activities in which asylum-seekers or refugees may engage and shall issue an identity document accordingly, confirming the status of asylum-seeker or refugee;

(b) An asylum-seeker or refugee shall not leave the country without the authorization of the appropriate official at the Ministry of Foreign Affairs.

Students

54. The immigration application may be submitted either by the State institution or State-approved private institution, or directly by the foreign student.

55. It must be established that the student is in receipt of funding from a national or foreign lending institution or, alternatively, that the student has deposited \$1,000 per academic year plus an additional \$500 for each family member, in a national bank, or a foreign bank established in Ecuador.

56. Otherwise, international agreements shall apply as relevant.

57. Students may not engage in employment or other profit-making activities, except insofar as they relate to their professional training.

Highly skilled technical experts or specialized workers

58. This category includes:

- (a) Highly skilled technical or specialized workers;
- (b) General managers, directors and other authorized company representatives.

59. The following criteria must be fulfilled for the visa to be granted:

(a) The applicant must satisfy the officer of the Ecuadorian Foreign Office that a short-term need has arisen for the immigrant's assistance, either in the immigrant's area of expertise or for industrial training purposes, and that, at the time of application, no suitably qualified Ecuadorian citizen is available in the workplace who would be able to carry out the assignment;

(b) The application must be submitted either by the immigrant or by the natural or legal person sponsoring the application, and must be accompanied by the employment contract and the certificate issued by the National Director of Employment and Human Resources under article 569 of the Labour Code, or by documentary evidence of appointment as an authorized representative or agent under article 120 of the Commercial Code.

Missionaries and members of religious orders

60. The application must be submitted by the authorized representative of the relevant organization or order established in conformity with the Modus Vivendi between Ecuador and the Holy See.

Persons assisted by national organizations lawfully established with the aim of developing cultural exchange programmes

61. The application must be submitted by a legal person or entity established or lawfully operating in Ecuador with the aim of developing cultural exchange programmes. International agreements will be taken into consideration.

Short-term visitors

62. This category includes short-term visitors for lawful purposes related to tourism, sports, health, studies, science or art, or engaged in business activities that do not require a concurrent importation of goods, for a maximum period of three months in any year.

63. The following shall be considered as visitors:

(a) Persons who enter transit areas during an operational stop by a seagoing vessel or aircraft, and who intend to continue their journey in the same vessel or aircraft, or in another one provided by the same company;

(b) Individuals in transit through Ecuador en route to their country of destination, whether they are persons intending to board a vessel destined for another State, or drivers providing international land transport services;

(c) Short-term visitors (as defined in para. 62 above) for a period not exceeding three months in any given year;

(d) Persons resident abroad in towns close to the Ecuadorian border who need to travel on a daily basis to towns in neighbouring regions of Ecuador.

Visa registration

64. Any foreigner subject to Ecuadorian jurisdiction and aged over 18 who has been admitted as a permanent or temporary immigrant, with the exception of those classed as visitors, shall report to the Office of the Director-General for Aliens of the Ministry of the Interior and Police within 30 days of disembarking in Ecuador, and shall subsequently register with the Department of Migration.

Effect of registration

65. Aliens with the status of permanent immigrant shall, from the date of registration with the Office of the Director-General for Aliens, be considered as having their national domicile in Ecuador.

66. The main purpose of the distinction in law between aliens admitted or registered as permanent immigrants and temporary immigrants is to determine domicile, and thus to allow permanent immigrants to exercise and enjoy certain rights pertaining to the legal status of domicile in those areas of national legislation where it is a recognized and relevant factor.

Changes of immigration status and category

67. No alien may hold more than one immigration status at any one time; however, aliens who have entered the country and registered in a lawful manner may change their status or category.

Offences relating to migration

68. As regards migration offences, chapter VI of the latest consolidated version of the Migration Act establishes a number of crimes, misdemeanours and sentences, which will be dealt with by the criminal justice system in accordance with the Code of Criminal Procedure.

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

(a) Any alien who, having been excluded or deported from Ecuador, enters or attempts to re-enter the country without prior authorization under article 16 of the Migration Act;

(b) Any person who, in completing, endorsing, issuing or obtaining a visa, passport or any other migration document, acts in an arbitrary manner, misrepresents the facts or lays false claim to Ecuadorian nationality;

(c) Any person who, independently or on behalf of a third party, guides, transports or facilitates the entry of aliens into Ecuador in a clandestine or fraudulent manner, or who employs an alien in breach of immigration law and regulations;

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

70. Moreover, any person who, whether by commission or omission, breaches obligations, duties or responsibilities laid down in the laws and regulations on aliens or migration shall be guilty of a serious contravention, and shall be liable to a fine of between US\$ 200 and US\$ 2,000, without prejudice to any penalty that may apply in respect of a more serious crime, or under other provisions of the aforementioned laws. [\[9\]](#)

2. Summary of Ecuadorian legislation on migration

71. A summary is given below of Ecuadorian legislation on migration, which respects and ensures to all migrant workers their human rights in conformity with article 7 of the Convention.

Legislation	Subject of the legislation
Codification 2005-006, Codification of the Migration Act	<ul style="list-style-type: none"> · Regulates the entry and departure of Ecuadorian and foreign citizens · Describes the hierarchy of administrative bodies related to migration · Procedures, actions and sanctions relating to migration offences
Supreme Decree No. 1900, Regulations issued under the Migration Act	<ul style="list-style-type: none"> · Secondary legislation on the substance of the Act
Codification 2004-023, Codification of the	<ul style="list-style-type: none"> · Procedures for the temporary or permanent

Aliens Act		admission and regularization of aliens
Executive Decree No. 1991, Regulations issued under the Aliens Act	·	Secondary legislation on the substance of the Act
Supreme Decree No. 276, Naturalization Act	·	Procedures for granting Ecuadorian nationality to aliens
Supreme Decree No. 277, Regulations issued under the Naturalization Act	·	Secondary legislation on the substance of the Act
Codification 2005-005, Codification of the Travel Documents Act	·	Procedures for the documentation of Ecuadorian and foreign citizens
	·	Classification of travel documentation
Executive Decree No. 2084-A, Regulations issued under the Travel Documents Act	·	Secondary legislation on the substance of the Act
Supreme Decree No. 281, Consular Fees Act	·	Regulation on fees charged by the consulate for the issue of migration documents
Ministerial Decision No. 188, Regulations issued under the Consular Fees Act	·	Secondary legislation on the substance of the Act
Ministerial Decision No. 0343, Consular and Diplomatic Fees	·	Sets the fees charged by the consulate for the issue of migration documents
Decision No. 005, Consultative Council on Migration Policy	Special rules for the naturalization of refugees	· Establishes the period of residence required for aliens and refugees to qualify for naturalization
Framework convention on bilateral cooperation included in the bilateral declaration with the Foreign Minister of Costa Rica	Tackles the common agenda and matters of bilateral interest	· Promotes international cooperation · Implementation of programmes and mechanisms for the protection and social integration of refugees

3. Regional agreements on migration

72. At the regional level, Ecuador and the other countries participating in the Andean integration process have made significant progress in reaching agreements that recognize the rights of migrant workers, for example in the areas of “Industrial development”, “Rationalization of existing industry”, “Agricultural regime”, “Origin of goods”, etc. Although these agreements are concerned with trade, they all make some reference to guaranteeing the human rights of migrants within the Andean region.

73. Agreements specifically on the subject of migration include the Andrés Bello Convention on Educational, Scientific and Cultural Integration, the Simón Rodríguez Agreement on Social and Labour Integration, the Agreement for the Establishment of the Andean Reserve Fund and the Andean Labour Migration Instrument, Decision 545 of the Andean Community of Nations.

74. It should be pointed out that the Andean region is in the course of developing an employment and

documentation scheme to prevent the economic and social exploitation of irregular and undocumented migrants. No specific measures are required for Andean legislation to be enforceable at the domestic level, since it is directly or conditionally applicable by virtue of the regional instruments adopted by Ecuador.

75. The following regional instruments protect all migrant workers, including those who are irregular or undocumented:

Regional instrument	Contents of the instrument	Publication in the <i>Official Gazette</i>
(a) Decision 545, Andean Labour Migration Instrument, Andean Council of Foreign Ministers	<ul style="list-style-type: none"> · Covers workers who are employed in the subregion · Classification of migrant workers · Principles of non-discrimination, equality before the law, and equal opportunities · Equal rights in employment (individual and collective rights), social security and legal protection · Freedom to transfer funds earned from employment, food allowances for children, single taxation regime 	No. 160, 2 September 2003
(b) Decision 503, Recognition of national identification documents, Andean Council of Foreign Ministers	<ul style="list-style-type: none"> · Standardization and uniformity of travel documents required for tourism in the subregion 	No. 385, 7 August 2001
(c) Decision 527, Andean migration card (TAM), General Secretariat of the Andean Community	<ul style="list-style-type: none"> · Standardization and uniformity of the card (printing, electronic or virtual formats, use of Spanish or English) 	No. 386, 8 August 2001
(d) Decision 504, Creation of an Andean passport, Andean Council of Foreign Ministers	<ul style="list-style-type: none"> · Standardization and uniformity of the migrant identification document 	No. 385, 7 August 2001
(e) Decision 526, Immigration checkpoints in airports for nationals and foreign residents of member States, Andean Council of Foreign Ministers	<ul style="list-style-type: none"> · Establishment of specific immigration control checkpoints for nationals of the subregion 	

4. Bilateral instruments

76. There are also a number of bilateral instruments signed by Ecuador and Colombia, which reflect a trend towards the increasing integration of the two countries' foreign policy, and mutual concerns about migration.

Bilateral instrument	Publication in the <i>Official Gazette</i>
Migration	
Executive Decree No. 466, Implementation of the Colombia-Ecuador agreement on the entry and exit of citizens of both countries	No. 181, 9 January 1941
Agreement on Colombian-Ecuadorian border integration	No. 2, 30 March 1966
Agreement on the principles of cooperation between the Government of Ecuador and the Intergovernmental Committee for European Migration	No. 235, 17 December 1976
Agreement between Ecuador and Colombia on illegal migrants	No. 434, 5 May 1994
Migrants in transit	
Agreement on the transit of persons and vehicles between Ecuador and Colombia	No. 408, 10 November 1973
Protocol amending the agreement on the transit of persons and vehicles	No. 192, 14 November 1976
Agreement between Ecuador and Colombia on the transit of persons, vehicles, river and maritime vessels, and aircraft	No. 648, 22 January 1991
Agreement between Ecuador and Colombia on the transit of persons, vehicles, river and maritime vessels, and aircraft. Exchange of ratification instruments	No. 83, 9 December 1992
Border transit	
Act extending the Convention between Ecuador and Colombia on the construction of the international bridge over the San Miguel river	No. 103, 8 January 1993
Exchange of notes between Ecuador and Colombia agreeing to include the department of Cauca in the agreement on the transit of persons and vehicles	No. 268, 3 September 1993
Agreement between Ecuador and Colombia to create a border crossing point in the Pacific coast region	No. 272, 9 September 1993
Inter-institutional agreement between the Ministry of Public Works and Communications and the Colombian Ministry of Transport	Supplement No. 121, 31 January 1997
Agreements between Ecuador and Colombia on the	Supplement No. 121, 31 January 1997

construction of the bridge over the Mataje river and border posts

Regulation on the operation of the bilateral Ecuador-Colombia Committee on Border Security, Supervision and Control

No. 4, 17 February 1997

Agreement between Ecuador and Colombia on the transit of persons, vehicles, river and maritime vessels, and aircraft

No. 172, 14 October 1997

Agreement between Ecuador and Colombia facilitating the movement of persons between the two countries, on presentation of either an identity card or a passport

No. 172, 14 October 1997

Convention on special facilities for the transit of personnel involved in the bilateral border region development project

No. 26, 28 February 2000

Regularization of undocumented persons

Agreement between Ecuador and Colombia on undocumented persons, signed in Esmeraldas on 18 April 1990

No. 35, 28 September 1990

Agreement on the regularization of undocumented persons

No. 434, 5 May 1994

77. Despite these bilateral agreements, which are in response to the repercussions of the internal conflict in Colombia and the massive influx of Colombian nationals to Ecuador, it was decided in February 2004 during the third meeting of the immigration authorities of Ecuador and Colombia (held in Colombia) to require any Colombian citizen entering Ecuador to produce his or her police record unless the citizen fell within one of the groups exempted by the Consultative Council on Migration Policy, Ecuador's highest authority on migration policy. The Consultative Council decided to exempt from this requirement Colombians travelling on a permanent immigration visa, temporary immigrants, minors, persons recognized by Ecuador as having refugee status and members of flight crews. Colombian government or regional officials, diplomatic officials and members of international organizations were also exempted, as were persons in transit through border towns and persons engaged in sporting or cultural activities. [\[10\]](#)

78. At the same time, in the context of the Ecuador-Peru peace process, a number of working groups have been established, including one on human rights that considers migration not in terms of security, but as a social, economic and development issue that should contribute to improving citizens' quality of life and facilitating family reunion.

79. Lastly, from an international perspective, in May 2006 Ecuador signed the Lima Declaration of the Special International Conference, at Ministerial Level, of Developing Countries with Substantial International Migrant Flows, which recalls the need to consider migration issues from a development perspective, since migrants are human beings with rights and active agents of development. One of the main features of the Declaration is its recognition of the human rights of migrants and of the obligation of States effectively to protect and promote the human rights of all migrants in all instances. [\[11\]](#)

D. Description of the actual situation as regards the practical implementation of the Convention in the reporting State and the circumstances affecting the fulfilment of the obligations of the reporting State under the Convention

80. Despite the fact that Ecuadorians have not shown extreme or widespread signs of xenophobia or discrimination against foreigners, various policies, including education in tolerance and respect for human rights, have been implemented in order to promote social integration between immigrants and Ecuadorian nationals. As this is a long-term process, it has not yet been possible to measure the results and include them in the present report.

81. In addition, in order to implement article 68 of the Convention, the State party has carried out various actions with a view to preventing and eliminating illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons, groups or entities which organize, operate or assist in organizing or operating such movements. Although many smugglers and illegal traffickers of migrants have been caught, many individuals and groups continue to be involved in this illegal activity. Victims do not provide information or cooperate in criminal proceedings and Ecuador does not have adequate resources for investigations.

82. With regard to the cooperation between States parties with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families, referred to in article 64 of the Convention, this is made difficult by the lack of interest on the part of countries that receive Ecuadorian emigrants, some of which are not parties to the Convention.

83. No progress has been made in the adoption of measures regarding the orderly return of migrant workers. Ecuador requires the cooperation of Colombia for the orderly return of the vast numbers of Colombian immigrants who came to Ecuador in search of security rather than for economic reasons. Ecuador is less developed than Colombia, and has high unemployment rates; it therefore cannot guarantee better living conditions for immigrants without the help of their country of origin and economic support from the rest of the international community.

84. With regard to the provision of services to deal with questions concerning international migration of workers, referred to in article 65 of the Convention, although Ecuador has set up the Office for the Recruitment of Migrant Workers in order to provide appropriate assistance to migrant workers and train them in matters relating to the requisite authorizations, formalities and arrangements for departure, travel, arrival, stay, remunerated activities and other relevant laws and regulations, many of those who emigrate prefer to do so illegally, with full knowledge of the risks involved, relying on the contacts of relatives who have already emigrated.

85. Lastly, while much has been done by civil society organizations working to protect the rights of Ecuadorian emigrants, which is a serious problem for the country, little has been done for immigrants. In addition, the aim of most State policies is to improve the quality of life of Ecuadorian residents, regardless of nationality; it has therefore been very difficult to obtain statistical data or measurements for inclusion in the present report.

E. Information on measures taken by the State party for the dissemination and promotion of the Convention and on cooperation with civil society in order to promote and respect the rights contained in the Convention

86. Ecuador's National Plan for Human Rights was approved in 1998 by executive decree, in order to prevent, eliminate and punish the violation of human rights in the country. Article 27 of the Plan refers to the rights of foreigners and migrants. Following a broad process of consultation between public institutions and civil society organizations, the operational plan on employment, migrants, foreigners, refugees and stateless or displaced persons was adopted. These technical instruments specify which activities must be carried out in the legal, administrative and economic fields in order to guarantee compliance with the rights of the aforementioned groups.

87. In the second half of 2003, an extensive training programme was carried out at the national level on the operational plans for the human rights of migrants, with the participation of most NGOs and the public institutions of each provincial capital, with the aim of reviewing actions at the local level that could be implemented in relation to the content of the operational plans for the human rights of migrants. In 2004, actions to promote the rights of migrants were monitored, and it was found that there was poor local coordination between the public and private sectors, each of which was found to be working in isolation.

88. In conclusion, it should be pointed out that the work carried out for three years as part of Ecuador's National Plan for Human Rights, relating to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, focused on training civil society organizations and relevant public institutions to respect, ensure respect for, and promote the rights established in the Convention. In this way, some institutions, such as the national police, have incorporated the theme of the human rights of migrants in all courses and educational levels that are mandatory for police officials.

89. In addition, in 2003, as part of the project "Actions for the Protection of the Human Rights of Migrants and Members of Their Families and the Prevention of Trafficking in Persons in Ecuador", initiated by the Italian NGO Associazione per la Cooperazione Internazionale e l' Aiuto Umanitario (ALISEI) and the Fondo Ecuatoriano Popularum Progresivo (FEPP), with financial support from the European Union, joint work was carried out between representatives of the State and civil society in order to consider the reform of legislation relating to migration and the status of foreigners, focusing on the human rights of migrants, and a bill on support for Ecuadorian migrants and their families. A bill on the protection of the rights of Ecuadorian migrants and their families was also drafted up. These texts have been submitted to the Congress but have not yet been adopted. [\[12\]](#)

90. In addition, the Congress, with the support of the Communication, Migration and Development Plan, organized a workshop on the bill on support for Ecuadorian migrants and their families, which was held in Cuenca on 11 and 12 March 2004. This bill proposes the establishment of a national council for comprehensive support for Ecuadorian migrants and their families, lays down general guidelines for a national plan, specifies a number of tariff and tax facilities and issues guidelines to various States bodies, for the benefit of migrants. The bill is not yet in its second reading, but has been endorsed by government agencies and social organizations that specialize in migration issues.

91. In early 2005, the preparation of a plan of work was begun with the Network of Members of Migrants' Families, with offices in Quito and Riobamba, in order to implement a project to provide legal support to members of migrants' families. Regrettably, nothing came of this project, owing to the well-known political events of April 2005.

92. Subsequently, in October 2005, in cooperation with the Congress's Commission on Human Rights, the Ministry of Foreign Affairs organized a training seminar on the rights of migrants in Riobamba, which dealt with the penal reforms criminalizing the smuggling of migrants and trafficking in persons.

93. In September 2005, a cooperation agreement was signed between the Ministry of Labour, the Inter-American Observatory for Migrants' Rights and the Segundo Montes Mozo Centre, on the basis of which it was proposed to establish the National Council for Comprehensive Support for Ecuadorian Migrants and Their Families.

94. In 2006, after two years of inter-institutional work following the Government's declaration, by Executive Decree No. 1981 of 31 August 2004, that efforts to prevent kidnapping, smuggling of migrants and related crimes was a priority State policy, the National Plan to Combat Kidnapping, Smuggling of Migrants, Sexual Exploitation and Other Forms of Exploitation, and Prostitution of Women, Children and Adolescents, Child Pornography and Corruption of Minors was adopted within the inter-institutional and interdisciplinary commission established to draw up and disseminate the Plan.

95. The aforementioned Plan is an interdisciplinary text drawn up by all the national institutions involved: Ministry of the Interior, Ministry of Labour, Ministry of Social Welfare, Ministry of Foreign Affairs, National Council for Children and Adolescents, National Council for Women, National Institute of Children and the Family.

96. The Plan was discussed, disseminated and finalized in order to respond effectively to this phenomenon. Related policies, plans and programmes were established in the following areas:

- (a) Prevention;
- (b) Investigation and punishment;
- (c) Protection;
- (d) Compensation and restitution of victims' rights.

97. Another measure taken by the State to promote and disseminate the Convention is the creation of the Office for the Recruitment of Migrant Workers, coordinated by the Office of the Director-General for Ecuadorians Living Abroad, the Office of the Under-Secretary for Migration and Consular Affairs in the Ministry of Foreign Affairs and the International Organization for Migration (IOM), on the basis of an agreement signed in July 2002.

98. The main objective of the Office is the recruitment and transport to Spain of Ecuadorian migrant workers, within the framework of the Agreement between Ecuador and Spain concerning the Regulation and Planning of Migration Flows, signed on 29 May 2001.

99. Measures to disseminate the norms contained in the Convention have also been carried out, within the framework of the Andean Labour Migration Instrument; these measures have been supplemented by the process of labour regularization carried out to date.

100. In addition, in the framework of an inter-institutional cooperation agreement signed on 2 September 2005 between the Ministry of Labour, the Inter-American Observatory for Migrants' Rights and the Segundo Montes Mozo Centre, and civil society organizations specializing in migration issues, a round table on labour migration was set up, the main aim of which is - to assist in the formulation of public policies on migration, focusing on migrants' rights, and to encourage the participation of civil society in this debate. Participants in the round tables include the Ministry of Foreign Affairs, the Ministry of Labour, the Department of Migration

and various NGOs working in the area of migration, and international organizations such as IOM, the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Labour Organization (ILO), and others.

101. The objectives of the round tables are to:

- (a) Exchange successful experience in the social, legal and labour fields relating to migration;
- (b) Provide forums for discussion and study of legal proposals for the reform of domestic legislation on labour migration, in cooperation with the Congress;
- (c) Highlight the importance of complying with the principles, legal norms and recommendations of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Special Rapporteur on the human rights of migrants, the Special Rapporteur on Migrant Workers and Their Families of the Inter-American Commission on Human Rights; and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.

102. The achievements so far include:

- (a) Presentation of a draft executive decree on the establishment of the National Council for Labour Migration, which would be responsible for drawing up public policies on labour migration;
- (b) Amendment of Resolution 21 of the Ecuadorian Social Security Institute, establishing a liaison office with the Spanish Secretary of State for Social Security, for the implementation of the social security agreements between Spain and Ecuador;
- (c) Draft “supplementary agreement” for the creation of a joint working group to study the Spanish and Ecuadorian social security systems;
- (d) Removal of the explicit prohibition regarding employment on asylum-seekers’ identity cards;
- (e) Preparation of a draft ministerial agreement to set the value of employment cards for refugees at US\$ 2;
- (f) Training days on labour rights for refugees, for the country’s labour inspectors.

II. INFORMATION IN RELATION TO EACH OF THE ARTICLES OF THE CONVENTION

103. The articles of the Convention have been set out below as indicated in the Provisional Guidelines regarding the form and contents of initial reports to be submitted by States parties under article 73 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Articles 1 (para. 1) and 7: Non-discrimination

104. Generally speaking, Ecuador has comprehensive legislation and effective mechanisms for the protection of the rights, freedoms and opportunities of all persons, without discrimination of any kind. Article 23, paragraph 3, of the Constitution provides that “all persons shall be considered equal and shall enjoy the same rights, freedoms and opportunities, without discrimination on grounds of birth, age, sex, ethnic group, colour,

social origin, language, religion, political affiliation, property, sexual orientation, state of health, disability or difference of any other nature”.

105. Ecuador recognizes the right to equality before the law of nationals and foreigners. In Ecuador’s Constitution, which has been in force since 1998, the concept of nationality does not exist, but rather that of Ecuadorian citizenship, by birth or by naturalization. “Naturalization” is not a special temporary or permanent status between an individual and the State, but rather a means of holding Ecuadorian citizenship. The same applies to visas, asylum and refuge.

106. Notwithstanding this equality before the law, there are a number of restrictions on the exercise of the rights by foreigners, for reasons of political independence and national sovereignty. Thus, the exercise of political rights such as the right to vote and stand for election in general elections is reserved solely for Ecuadorians; and the right to own property is limited for foreigners in national security zones, in accordance with article 15 of the Constitution, which states that “foreign natural or legal persons shall not be able to acquire, in any capacity, concessions or land located in national security zones, for the purposes of economic exploitation”.

107. Article 2 of the Aliens Act refers to the equality of rights and provides that “In accordance with the Constitution of the Republic, foreigners shall have the same rights as Ecuadorians, subject to the restrictions provided by law.”

Article 83: Right to an effective remedy

108. The judiciary, in accordance with Ecuador’s Constitution and legislation, administers justice; that is, it exercises the public jurisdiction of trying specific cases and enforcing the relevant judgements.

109. In the cases before them, judges first apply the guarantees and rights established in the Constitution, and subsequently national legislation, taking into account article 163 of the Constitution, which states that “the norms contained in international treaties and conventions, once promulgated in the *Official Gazette*, shall form part of the domestic legal system and shall take precedence over laws and other norms of a lower status”.

110. In order to ensure the enjoyment of the rights recognized in the agreements, covenants and conventions to which Ecuador is a party, all residents of the country, in situations where they consider that their rights have been affected, may lodge a complaint with the following national bodies or courts: Office of the Public Prosecutor, the judiciary, the Office of the Ombudsman, offices of Commissioners for Women, Children and the Family, municipalities and the Congress. In cases where they consider that national legislation has not been properly complied with, residents of Ecuador may lodge complaints with the competent international bodies.

111. The Constitution demands the application of criminal and civil law, and domestic legislation provides for compensation for damages and injury. There must be due proportionality between offences and penalties.

112. The Office of the Ombudsman is the principal guarantor of fundamental freedoms and safeguards and ensures the defence and enjoyment of the rights of both nationals and foreigners. The primordial and essential function of the Office of the Ombudsman is the defence and protection of human rights. Its actions are designed to safeguard human rights by dealing with related complaints.

113. The Office of the Ombudsman provides advice on and monitors compliance with the right to due process in accordance with article 18 of its Organization Act, which provides that, when a case is subject to

administrative or judicial rulings, the role of the Office of the Ombudsman will be limited to monitoring due process. Owing to budget shortages, the Office of the Ombudsman has not been able to promote its services, consequently, one reason that inhabitants of Ecuador whose rights are violated do not lodge complaints with this body is because they are unaware of its existence.

Article 84: Obligation to implement the provisions of the Convention

114. Article 18 of Ecuador's Constitution states that the rights and guarantees laid down therein, and in the international instruments in force, shall be directly and immediately applicable before any judge, court or authority.

115. No authority may impose conditions or requirements not established in the aforementioned instrument or the law, for the exercise of these rights. The absence of legislation may not be invoked to justify the violation or disregard of the rights established in the Constitution, to dismiss actions arising from such violation or disregard, or to deny recognition of such rights.

116. Moreover, the international human rights law contained in the international instruments ratified by Ecuador is not only an integral part of its domestic legislation and therefore directly applicable by the competent authorities but, as stated above, has constitutional status under article 163 of the Constitution

117. Consequently, the provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families may be invoked before the ordinary courts and other administrative authorities, and may be applied directly.

118. Although its legislation has not yet been aligned with international principles, Ecuador acknowledges the need to do this in order to ensure the effective and prompt application of the rights established in the Convention. Although various bills to promote the rights of migrant workers and members of their families have been submitted to the Congress, their adoption has been delayed owing to Ecuador's year-long immersion in presidential elections.

Part III of the Convention: Human rights of all migrant workers and members of their families

Article 8: Right to leave and enter any State, including one's State of origin

119. The right of migrant workers and members of their families to leave Ecuador freely is guaranteed in domestic legislation. Article 23, paragraph 14, of the Constitution lays down "the right to cross the national territory freely and to choose one's residence". In addition, Ecuadorians are free to enter and leave Ecuador, and to move to and reside in the country of their choice.

120. An order not to leave the country may be issued solely by a competent judge, on the grounds provided for by law. Restriction orders and orders not to leave the country are preventive measures to ensure appearance in court in cases of non-payment of alimony and to prevent the kidnapping and trafficking of minors.

121. The National Police, through the Department of Migration, monitors the departures and arrivals of nationals and foreigners in accordance with the norms established in the Migration Act.

122. Article 16 of the regulations issued under the Migration Act entrusts chiefs of migration with a delicate and highly responsible duty, particularly the task of checking the records of restriction orders and orders not to leave the country. Chiefs of migration may not authorize the departure from the country of a person who has

been ordered not to leave or against whom legal proceedings are under way. For the latter, it is sufficient for the authorities to have served an initiating order, indicating the names of those charged.

123. Authorities issuing restriction orders and orders not to leave the country must comply with article 18 of the regulations issued under the Migration Act, which states that orders must clearly express such decisions and contain the full personal details and number of the identity card of the person in question in the corresponding notification to the Department of Migration of the National Police. The judge or court issuing this measure must renew it every six months for it to remain in force.

Procedures for restriction orders and orders not to leave the country

124. Any order not to leave the country issued by the competent authority must be immediately communicated to the Department of Migration, which in turn must inform Ecuador's various police headquarters. The same procedure is followed when an order not to leave the country is lifted.

125. All restriction orders and orders not to leave the country must clearly indicate the number of the restriction order, which is entered in the corresponding register, in which the time of submission of the document by the relevant authority must be recorded.

126. Chiefs of migration contact the competent authorities to obtain additional information about the identity of the persons concerned by the restriction order or order not to leave the country. They ask for this information to be confirmed in writing, in order to provide the Department of Migration with backup and evidence.

127. Restriction orders and orders not to leave the country are not destroyed, although there are legal provisions on their disposal and incineration. They must be stored in what are known as "passive files" for the purposes of any subsequent claim or request made to interested parties.

128. An arrest warrant issued by any authority constitutes an order not to leave the country and the individual in question is therefore arrested and immediately handed over to the relevant authority.

129. Preventive detention, which can be ordered by various authorities in order to prevent tax evasion or illegal migration, or to cooperate with the police inquiries of the International Criminal Police Organization (INTERPOL), is of short duration and is decided on in consultation with the Department of Migration.

130. Documents, letters and telegrams relating to orders not to leave the country are kept in a "special file", to which due security measures are applied, since they constitute the supporting documents justifying the restriction order or order not to leave the country.

131. Any order not to leave the country issued by the competent authority must be immediately communicated to the Department of Migration, which must in turn inform Ecuador's various police headquarters. The same procedure is followed when an order not to leave the country is lifted.

132. From the aforementioned norms and statistics, it will be observed that the State guarantees the right to liberty of movement and freedom to choose one's residence.

Table 9

Number of Ecuadorians and foreigners entering and leaving the country, by air,

sea and land ports, by province (total, January to December 2002)

Province	Ecuadorians	Ecuadorians	Foreigners	Foreigners
	leaving	entering	leaving	entering
Pichincha DNM-JPM-SDC	233 055	209 607	214 176	223 095
Guayas	282 649	220 894	140 322	145 874
El Oro	39 406	6 742	41 268	118 162
Manabi	2 456	1 975	3 399	4 450
Loja	3 149	404	7 232	3 721
Carchi	14 556	7 342	30 315	135 603
Esmeraldas	1 702	389	998	1 230
Z. Chinchipe	403	752	3 919	3 335
Galápagos	40	0	342	342
Sucumbios	1 553	6	137	82
Other police headquarters	10 117	6	0	13 989
Total	589 086	448 113	430 642	649 883

Number of Ecuadorians and foreigners entering and leaving the country, by air, sea and land ports, by province (2003)

Province	Ecuadorians	Ecuadorians	Foreigners	Foreigners
	leaving	entering	leaving	entering
Pichincha DNM-JPM	280 603	243 493	278 183	293 371
Guayas	255 485	200 662	155 812	153 233
El Oro	33 958	5 068	17 091	56 039
Manabi	391	374	330	394
Loja	925	745	2 987	10 243
Carchi	0	0	0	0
Esmeraldas	191	143	412	646
Z. Chinchipe	13	9	613	678
Galápagos	0	0	0	0
Sucumbios	8 133	5 426	29 729	111 873
Other police headquarters	1 702	374	0	2 109
Total	581 401	456 295	486 292	628 585

Number of Ecuadorians and foreigners entering and leaving the country, by air, sea and land ports, by province (2004)

Province	Ecuadorians	Ecuadorians	Foreigners	Foreigners
	leaving	entering	leaving	entering
Pichincha DNM-JPM-SDC	275 548	275 195	302 881	308 214
Guayas	229 024	201 653	195 572	160 487
El Oro	71 924	24 606	55 650	158 541
Manabi	779	2 351	903	2 323
Loja	5 297	3 568	11 748	14 067
Carchi	13 803	19 374	69 176	124 983

Esmeraldas	160	553	47	306
Z. Chinchipe	209	189	581	768
Sucumbios	1 064	1 211	683	1 184
Orellana	8 610	7 964	2 380	2 832
Other police headquarters	73		5	444
Total	606 494	536 780	639 626	774 149

Migratory movement by air, sea and land ports (2005)

Province	Ecuadorians leaving	Ecuadorians entering	Foreigners leaving	Foreigners entering
Pichincha DNM-JPM	296 386	306 044	343 498	352 674
Guayas	263 054	262 196	194 860	193 150
El Oro	77 300	18 345	51 361	172 973
Manabi	2 007	1 771	5 320	5 618
Loja	7 112	246	3 198	10 176
Carchi	13 144	8 811	82 471	120 680
Esmeraldas	747	718	440	708
Pastaza	429	-	367	1 480
Z. Chinchipe	595	590	2 222	2 845
Sucumbios	-	-	-	258
Orellana	25	1	74	222
Total	660 799	598 722	683 812	860 784

133. The right to leave one's country and return is also guaranteed by related legislation such as the Travel Documents Act, [\[13\]](#) which contains the regulations for obtaining the necessary documents to leave and return to Ecuador.

134. The Ministry of Foreign Affairs issues ordinary passports through the National Director of Travel Documents in Ecuador's capital; governors, in their respective provinces; and consular officials abroad. These authorities keep a record of passports issued.

135. Ecuadorians wishing to obtain an ordinary passport must apply using the form that the Ministry of Foreign Affairs has prepared for that purpose.

136. Naturalized Ecuadorians wishing to obtain a passport require prior authorization from the Ministry of Foreign Affairs. Those residing abroad for an uninterrupted period of longer than three years lose the right to hold the aforementioned passport, in accordance with article 16, paragraph 4, of the Naturalization Act, except in cases where the absence was for reasons duly justified under the Act.

Table 10

Passports issued in 2001

Governor's	January	February	March	April	May	June	July	August	September	October	November	December	Total	Monthly	%
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office													average		
Azuay	2 999	1 839	2 900	2	3	2	3	3 598	1 831	1 738	1 732	1 506	30	2 577	8.24
				990	757	791	246						927		
Bolívar	0	0	0	0	0	0	0	40	14	11	29	37	131	26	0.03
Canar	0	0	0	0	0	0	0	0	0	184	265	302	751	250	0.20
Cotopaxi	110	169	202	513	339	281	283	233	178	191	222	220	2	245	0.78
													941		
Chimborazo	283	295	470	858	769	552	684	520	310	572	526	507	6	529	1.69
													346		
Esmeraldas	463	245	396	515	522	433	450	382	347	428	445	403	5	419	1.34
													029		
El Oro	1 590	953	1 383	2	1	1	1	1 382	1 164	1 342	1 727	1 491	18	1 556	4.97
				165	676	956	837						666		
Guayas	8 773	7 041	8 284	9	10	8	8	8 340	6 559	7 437	8 209	7 315	98	8 214	26.26
				063	442	756	343						562		
Imbabura	469	377	686	900	752	664	688	545	385	571	597	429	7	589	1.88
													063		
Loja	910	396	704	1	1	1	1	1 186	1 009	1 365	1 371	1 118	13	1 136	3.63
				182	463	339	586						629		
Manabí	1 820	1 309	1 498	3	1	1	1	1 426	1 087	1 293	1 576	1 557	19	1 602	5.12
				146	586	454	474						226		
Pichincha	8 094	5 413	7 733	10	12	11	11	10	6 762	7 896	7 785	7 277	108	9 010	28.81
				943	769	111	858	474					115		
Tungurahua	1 377	541	866	1	1	1	1	1 191	695	955	1 110	1 087	13	1 089	3.48
				280	359	153	449						063		
UIO-Oficial	37	39	34	74	91	63	34	42	20	29	108	24	595	50	0.16
UIO-Especial	45	55	49	152	73	140	60	99	44	57	63	26	863	72	0.23
UIO-Diplom	47	34	59	117	61	43	62	29	18	18	13	23	524	44	0.14
UIO-Azul	12	23	19	36	9	12	39	54	26	19	13	11	273	23	0.07
GYE-Oficial	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00
GYE-Especial	0	0	0	0	0	0	0	0	0	0	0	2	2	0	0.00
GYE-Diplom	0	0	0	0	0	0	0	0	0	0	0	3	3	0	0.00
GYE-Azul	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00
National total	27 029	18 729	25 283	33	35	30	32	29	20 449	24	25 791	23 338	326	27 226	87.06
Consulates	4 796	4 395	4 751	4	3	4	4	4 115	2 843	1 306	6 390	3 086	48	4 047	12.94
				357	962	047	521						569		
Total number of passports issued in 2001												375	31 273	100.00	
												278			

Total income for the Ministry of Foreign Affairs

National	3 267 090
Consulates	5 342 590
Total raised	8 609 680

Table 11

Passports delivered from 2003 (date of introduction of new passport) to 2006

RPRT	LCTN_ Code	LCTN_Name	Ordinary_psptr	Diplomatic_ps	Official_ps	Special_ps	Foreign_psptr	Total
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2003	2	Quito	11 897	131	98	112	55	12 293
2003	3	Guayaquil	6 801	5	9	13	3	6 831
2003	4	Cuenca	1 753	0	0	0	0	1 753
2004	2	Quito	66 482	661	650	652	412	68 857
2004	3	Guayaquil	56 077	42	65	55	9	56 248
2004	4	Cuenca	20 165	0	0	1	1	20 167
2004	5	New York	15 649	7	0	0	0	15 656
2004	6	New Jersey	5 048	2	0	0	0	5 050
2004	7	Caracas	857	1	0	0	0	858
2004	8	Madrid	8 899	2	0	0	0	8 901
2004	9	Milan	2 257	0	0	0	0	2 257
2004	32	Los Angeles	634	0	0	0	0	634
2005	2	Quito	73 232	652	692	670	375	75 621
2005	3	Guayaquil	62 076	36	161	173	13	62 459
2005	4	Cuenca	20 931	0	3	3	0	20 937
2005	5	New York	23 001	0	0	1	0	23 002
2005	6	New Jersey	8 721	4	0	1	0	8 726
2005	7	Caracas	2 069	6	1	0	0	2 076
2005	8	Madrid	23 243	1	0	0	0	25 244
2005	9	Milan	5 599	2	0	0	0	5 601
2005	32	Los Angeles	1 084	0	0	0	0	1 084
2006	2	Quito	56 872	348	371	407	200	58 198
2006	3	Guayaquil	47 796	6	84	73	8	47 967
2006	4	Cuenca	13 564	0	0	1	0	13 565
2006	5	New York	16 039	1	0	0	0	16 040
2006	6	New Jersey	7 749	0	0	0	0	7 749
2006	7	Caracas	1 512	4	0	0	0	1 516
2006	8	Madrid	19 978	6	0	0	0	19 984
2006	9	Milan	4 796	0	0	0	0	4 796
2006	32	Los Angeles	649	0	0	0	0	649
Total			587 430	1 917	2 134	2 162	1 076	

137. In addition, entry of foreigners is governed by the Migration Act, as described in section I.C of this report. Generally speaking, all foreigners can enter the country freely. For some countries, for reasons of reciprocity, Ecuador requests an entry visa. In all other cases, foreigners enter as tourists for a period of three months, which may be extended for a similar period. Ecuador grants special visas to foreigners entering the country for the purpose of intercultural exchange, study or employment.

Article 9: Right to life

138. Article 23, paragraph 1, of the Constitution guarantees the right to life and prohibits the death penalty.

139. Article 20, paragraph 2, prohibits the enforced disappearance of persons and establishes this offence as a crime against humanity, providing for the imprescriptibility of criminal proceedings and penalties for this crime. Perpetrators of enforced disappearance may not be granted a pardon or amnesty. Similarly, improper use of human genetic material is prohibited.

140. Article 49 protects the right to life from the time of conception.

141. Article 35, paragraph 10, prohibits the crippling, on any pretext, of public services, particularly health, education, justice and social security, electric power, drinking water and sewerage, fuel processing, transport and distribution, public transport and telecommunications. The aim of this provision is to protect the right to life through the continuous provision of basic services, particularly health services.

142. Article 156 of the Criminal Code, amended by article 15 of Act 2002-75, published in *Official Gazette* No. 635 of 7 August 2002, punishes doctors, nurses, pharmacists, medical assistants, health clinic staff or owners of pharmacies or drugstores who, against the orders of the competent authority, cripple services or refuse to assist those in need of their help. This offence is punishable by a prison sentence of one to five years, and a fine. The maximum penalty is applied to members of professional organizations who encourage the commission of such offences, if the offences are committed.

143. It is important to point out that the Criminal Code was amended in September 2001 to increase the penalties for offences against human life, with aggravating circumstances, such as in cases of kidnapping or sexual violence involving the death of the victim (articles 450, 452, 512, unnumbered article, 513, 514 and 515).

Articles 10 and 11: Prohibition of torture; prohibition of cruel, inhuman or degrading treatment or punishment; prohibition of slavery and servitude

144. The Constitution also protects personal integrity. The following are prohibited: cruel punishment, torture; all treatment that is inhuman or degrading or involves physical, psychological or sexual violence or coercion, or the improper use of human genetic material.

145. The death penalty was abolished under Ecuadorian law in 1878, as were all forms of mental or psychological punishment.

146. Ecuador has ratified the Inter-American Convention to Prevent and Punish Torture, which was published in *Official Gazette* No. 360 of 13 January 2000.

147. It should be pointed out that, as a reflection of its unwavering commitment to the progressive development of international law, Ecuador has also ratified the Rome Statute of the International Criminal Court, which was published in *Official Gazette* No. 699 of 7 November 2002, and thereby became part of Ecuadorian law.

148. Ecuador has also ratified the following related international instruments, which form part of its domestic legislation:

(a) International Covenant on Civil and Political Rights (art. 5), *Official Gazette* No. 140 of 14 October 1966;

(b) International Convention on the Elimination of All Forms of Racial Discrimination (art. 15, paras. 2 and 3), *Official Gazette* No. 140 of 14 October 1966;

(c) Convention on the Elimination of All Forms of Discrimination against Women (art. 12, para. 2), *Official Gazette* No. 132 of 2 December 1981;

(d) Convention on the Rights of the Child (art. 36 (d) and art. 40), *Official Gazette* No. 387 of 2 March 1990;

(e) International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, *Official Gazette* No. 206 of 7 June 1999.

149. In connection with slavery, article 23, paragraph 4, of the Constitution reiterates the unwavering stance adopted by Ecuador banning “slavery or servitude in all their forms”, and the second subparagraph of

paragraph 17 of that article reaffirms that “no person shall be obliged to perform unpaid or forced labour”.

Articles 12, 13 and 26: Freedom of expression; freedom of thought, conscience and religion; right to join freely any trade union

150. Freedom of thought, conscience and religion is guaranteed in article 23, paragraph 11, of the Constitution. This freedom can be expressed either individually or in community with others, in public or in private. Thus, individuals are free to practise the religion of their choice, subject only to such limitations as are prescribed by law and are necessary for the protection and respect of diversity, plurality, security and the rights of others.

151. Ecuador’s legislation recognizes the existence of various religions and beliefs other than Catholicism, which continues to be the predominant faith in Ecuador. Various religious groups have been recognized by the Ministry of the Interior and Police following an administrative procedure for the legalization of the statutes, regulations and practices of religious associations and communities wishing to disseminate their principles in the national territory, provided that they do not conflict with the aforementioned rights.

152. The Government does not require religious groups to hold a licence or to be registered; they are free, even without being registered, to manifest their religion or belief either individually or in community with others and in public or private. However, if religious groups are involved in commercial activities it is preferable that they be registered. In addition, religious organizations can decide to register in order to acquire legal capacity; the register is also useful when contracts are signed. Any religious organization wishing to register with the Government must submit a charter indicating the organization’s not-for-profit status, and provide the signatures of its members. These requirements are stipulated in the Religion Act, which has been in force since 1937.

153. Article 23, paragraph 9, of the Constitution guarantees “the right to freedom of opinion and to the expression of views through any of the mass media, without prejudice to the duties and obligations laid down by law ...”

154. In accordance with the constitutional and legal provisions relating to a state of emergency, restrictions may be placed on freedom of expression.

155. It is important to note that Ecuador respects freedom of expression. The authorities have not restricted access to the media, which are completely free to publish political comments and criticisms of the Government, whether from national or foreign sources. On the contrary, the State is in favour of setting up citizen monitoring structures, such as the Committee on Civic Control of Corruption, which has constitutional status under the 1998 Constitution, as a democratic forum established with the aim of carrying out specific activities related to the control and social surveillance of public management through the participation of citizens. [\[14\]](#)

156. Freedom of peaceful assembly and association is guaranteed under article 23, paragraph 19, of the Constitution. No specific provisions exist in the domestic legal system to restrict this right.

157. A culture of debate and dialogue has begun in Ecuador. This has allowed all social sectors to hold meetings, forums, networks and round tables to examine the exercise of their constitutional and legal rights. This right is fully guaranteed throughout Ecuador.

158. The provisions of the Constitution guarantee the right of free association and the right to set up trade

unions. Article 35, paragraph 9, of the Constitution guarantees the right of workers and employers to organize, and the right of such organizations to operate freely without prior authorization and in accordance with the law. For all matters concerning labour relations within public sector institutions, the labour sector shall be represented by a single organization. Article 35, paragraph 10, guarantees the right of workers to strike, and the right of employers to lock workers out, in accordance with the law.

159. The State guarantees the aforementioned right through domestic legislation such as the Labour Code, the Civil Code, the Commercial Code and the regulations governing not-for-profit legal persons, among others.

160. Employees may choose to organize themselves into trade unions, either as an independent unit of work colleagues, or as members of a collective representing the group of workers as a whole. The word “association” is generally used when speaking of any organization of employees in the private sector, or any trade union representing a large number of workers in industry.

161. Trade unions and workers’ organizations wield considerable power in negotiating collective contracts for their members, particularly regarding employment conditions, salary increases and social benefits.

162. In order for a trade union to be established, it must comprise at least 30 workers in a given company, who must elect members to represent them before management and before the Government. A trade union comprising workers from different companies within the same sector must include at least 30 workers from that sector.

163. Ecuadorian law provides that employees who do not belong to any organization or trade union have the right to include in their individual contracts the same benefits and salary increases negotiated for contracts of trade union members. Despite not being members, these non-affiliated workers must also pay trade union dues, which must not exceed 1.5 per cent of their monthly salary.

164. While all these rights are guaranteed to all foreign workers, in practice foreign citizens who have regularized their migration status enjoy greater protection.

Articles 14 and 15: Prohibition of arbitrary or unlawful interference with privacy, family, home, correspondence or other communications; prohibition of arbitrary deprivation of property

165. The Constitution of Ecuador recognizes “the right to honour, to a good reputation and to personal and family privacy. The law shall protect the name, image and voice of the individual”. Any person who is harmed by incorrect statements or whose honour is impugned by publications in the press or other media, shall be entitled to insist on free, immediate and proportional rectification by the latter.

166. Article 489 of the Criminal Code deals with offences against honour and stipulates, with regard to defamation, that “it is calumnious when it consists in the false imputation of an offence, and is not calumnious when it consists in any other statement designed to discredit, dishonour or disparage another person or in any action performed with the same object”.

167. To supplement the above provision, article 491 of the Criminal Code states that “a person found guilty of calumnious defamation shall be punished by a prison term of six months to two years and a fine of 45 sucres if the allegations were made: in public meetings or places; in the presence of 10 or more persons; by means of written texts, whether printed or not, illustrations or emblems exposed to public view; or by means of texts, including letters, that were not published but sent or communicated to other persons”. Article 492 states that “persons making allegations privately or in the presence of fewer than 10 persons shall be punished by a prison

term of one to six months and a fine of 45 sucres”.

168. The Constitution also guarantees non-interference with a person’s privacy, non-interference with the telecommunications service, and the secrecy and inviolability of correspondence.

169. The inviolability of the home is established in article 23, paragraph 12, of the Constitution: “No one may enter it or carry out inspections or searches without the authorization of the person living in it or by court order, in the cases and in the form laid down by the law.” This right is also contained in articles 191 to 196 of the Criminal Code and in articles 203 and 204 of the Code of Criminal Procedure.

170. Article 23, paragraph 13, refers to the inviolability and secrecy of correspondence. It provides that correspondence may be seized, opened and examined only in the cases provided for by law. Secrecy must be observed with regard to matters unrelated to the matter that justified examination of the correspondence. The same principle must be observed with regard to telegraphic, cable, telephone, electronic and other similar communications. Documents obtained through the violation of this guarantee have no validity in court and those responsible will be punished in accordance with the law.

171. In chapter IV of the Regulations on the Services of the National Post Office relating to the secrecy and inviolability of correspondence, article 10 states: “The secrecy of correspondence relates not only to the content of correspondence, but also entails an absolute prohibition for employees to supply any information on the existence, address, number or other external circumstances of the dispatches that they handle. Employees shall not supply information or give data concerning postal operations of any kind for which they are responsible unless they are expressly authorized to do so by the Director-General.” Article 11 of the Regulations states that “the following affect the inviolability of correspondence: the arbitrary or illegal detention of correspondence, its deliberate misrouting, opening, removal, destruction, retention or concealment and, in general, any breach of trust while it is in the keeping of the postal services”.

172. In addition, with regard to article 15, no migrant worker may be arbitrarily deprived of property, since in Ecuador property, in any of its forms, constitutes a right that the State recognizes and guarantees. Only for the legally established purposes of social order may State institutions, in accordance with the procedure and time limits specified in the procedural rules, expropriate private sector property in return for a fair evaluation, payment or compensation. In general, all confiscation is prohibited.

Articles 16 (paras. 1-4), 17 and 24: Right to liberty and security of person; protection from arbitrary arrest and detention; recognition as a person before the law

173. The right to liberty is guaranteed in article 24, paragraph 6, of the Constitution, which states that no one shall be deprived of his or her liberty except under an order in writing by a competent authority, for the time and in accordance with the formalities prescribed by law; however, a person caught in flagrante delicto may be held without a court order for a period not exceeding 24 hours. This provision is confirmed in article 174 of the Code of Criminal Procedure.

174. Article 24, paragraph 4 (4), of the Constitution provides that anyone who is arrested has the right to be fully informed of the reasons for the arrest, the identity of the authority ordering the arrest, the identity of the officers making the arrest and the identity of those conducting questioning. The person arrested shall also be informed of his right to remain silent, to request the presence of counsel, and to communicate with a family member or with the consulate of his country of origin.

175. Article 24, paragraph 5, provides that any judicial, pretrial or administrative proceedings that take place

without the presence of private defence counsel, or counsel appointed by the State, shall lack evidentiary effect. These constitutional provisions also prevent acts of torture and are in accordance with articles 11 to 15 of the new Code of Criminal Procedure.

176. Article 205 of the Criminal Code defines torture of arrested persons as a crime, punishable by five years' imprisonment and loss of political rights for an equivalent period.

177. It should be noted that, in accordance with article 24, paragraph 8, of the Constitution, "pretrial detention shall not exceed six months for offences punishable by detention, or one year for offences punishable by imprisonment. Should these limits be exceeded, the pretrial detention order shall be void, in which case the liability of the judge hearing the case is engaged. A detainee shall, in all cases and without any exception, regain his or her freedom once a decision of stay of sentence or acquittal has been handed down, without prejudice to any pending inquiry or appeal".

178. *Detención en firme* was included in article 173-A of the Code of Criminal Procedure, as amended in January 2003, "in order to ensure the presence of the accused during the trial. When issuing a committal order, the court must order the detention [*detención en firme*] of the accused". This provision has applied exclusively to proceedings initiated since 13 January 2003).

179. It should be pointed out that *Official Gazette* No. 382 of 23 October 2006 published the ruling by the Constitutional Court that *detención en firme* was unconstitutional, as were the articles of the Code of Criminal Procedure governing this legal action. *Detención en firme* has therefore been legally repealed.

180. In line with article 17 of the Convention, and in accordance with the information provided by the Department of Social Rehabilitation in June 2005, arrested foreign nationals are held, in so far as practicable, separately from convicted persons.

181. In mid-June 2005, 1,173 foreign prisoners were being held in social rehabilitation centres. Those arrested for, and convicted of, crimes defined in the legal provisions in force do not occupy separate cells, owing to the severe lack of prison space. In general, they are treated in a similar manner to Ecuadorians. If there is differentiated treatment with regard to visits, it is that exceptions have been made to the usual visiting times and days.

182. Similarly, exceptional cases exist for persons arrested for infraction of provisions related to migration; such persons are sometimes held in provisional detention centres until their deportation has been processed. This occurs in the provinces of Pichincha, Guayas and Manabí. In cities where such establishments do not exist, these detainees are held in social rehabilitation centres, after a period of time spent in migration centres. [\[15\]](#) The Office of the Ombudsman and the Office of the Public Prosecutor conduct periodic inspections of prisons and the general operation of the prison system. This has resulted in the abolition of solitary confinement cells.

183. With regard to administrative measures, prisoners can receive visits by family, friends and acquaintances three days a week (Wednesday, Saturday and Sunday). They are also in constant contact with their defence lawyers and, in the case of foreigners, with their diplomatic representatives. Moreover, they have the right to receive and send correspondence and to meet with government and civil society representatives. They have the right to submit complaints to the administrative and judicial authorities regarding the protection of their rights.

184. Article 23, paragraph 15, of the Constitution guarantees the right to submit complaints and petitions, enabling all persons - in this case detainees - to submit a complaint to the Ministry of the Interior - the highest

authority governing the Department of Social Rehabilitation - or to inform the Ministry of their dissatisfaction with a particular situation.

185. Another mechanism for reducing overcrowding and improving the situation of detained foreigners in Ecuador was the entry into force in November 2005 of the Convention on the Transfer of Sentenced Persons, adopted by the Council of Europe in 1983. This instrument allows foreigners detained in Ecuadorian prisons and rehabilitation centres to be transferred to their country of origin in order to serve their sentence there, in accordance with the criminal law of that country.

186. In March 2006, the Legal and Technical Advisory Office of the Ministry of Foreign Affairs was established, by executive decree, as the central authority for cases to which the Convention on the Transfer of Sentenced Persons may be applied. However, for various reasons it has so far not been possible to carry out the corresponding transfers. [\[16\]](#)

187. In addition, bilateral agreements on the transfer of detainees have been concluded with Colombia and Spain, and several detainees have been transferred to these countries. Since 1994, Colombia has made 801 requests, 358 of which have been met favourably. Since 1997, Spain has made 137 requests, resulting in the transfer of 75 detainees. [\[17\]](#)

188. Lastly, with regard to article 24 of the Convention, all persons in Ecuador - whether nationals or foreigners - have the right to recognition as a person before the law. In other words, they have the right to perform actions and execute contracts within the framework of the law.

Articles 16 (paras. 5-9), 18 and 19: Right to liberty and security of person and right to procedural guarantees

189. In administering justice, judges ensure the equality of persons before the law, without discrimination on grounds of birth, age, sex, ethnic group, colour, social origin, language, religion, political affiliation, property, sexual orientation, state of health, disability or the legal status of foreigners and immigrants. Guarantees of due process are applied without discrimination in criminal and other proceedings.

190. Article 24, paragraphs 1 and 6, of the Constitution provides that no one shall be judged for an act or omission which, when committed, is not legally qualified as a criminal, administrative or other offence, and that penalties that are not established by the Constitution or by law shall not be applied. It is also not possible to try a person except in conformity with pre-existing laws and with observance of the appropriate procedures. Article 5 of the Code of Criminal Procedure stipulates that “no one shall be tried or punished more than once for the same act”.

191. Article 2 of the Criminal Code states that “no one may be prosecuted for an act that has not been specifically declared an offence under criminal law, or undergo a penalty that is not laid down in that law. The offence must be declared and the penalty established prior to commission of the act. An act ceases to be punishable if a law subsequent to its commission removes it from the list of offences; and, if sentence has already been passed, the penalty shall be extinguished, whether or not its implementation has begun. If the penalty established by law at the time of sentencing differs from that in force when the offence was committed, the lighter sentence shall be imposed. In general, all subsequent laws concerning the effects and extinction of actions and penalties shall be applied insofar as they are favourable to the offender, even though

an enforceable sentence has been passed”.

192. Article 121 of the Code of Criminal Procedure establishes the right of every individual to be informed and tried in his or her own language. For this purpose, an expert translator must be appointed and be present during the testimony of the person on trial. A record of the questions and answers during the proceedings must be drawn up in Spanish. Article 122 of the Code states that “if the person giving evidence is deaf and dumb, he shall provide his testimony in writing; and if he cannot write, the court shall hear the evidence with the aid of an interpreter or, failing that, of a person accustomed to communicating with the person giving evidence”.

193. In addition, the right to have a defence lawyer present during any questioning is guaranteed in Ecuador. Pretrial or administrative proceedings have no evidential effect in the absence of defence counsel and a representative of the Office of the Public Prosecutor. The provisions of the Constitution on this subject are as follows:

(a) No one may be sentenced without trial or deprived of the right of defence at any stage of the proceedings. Any person accused of a criminal offence shall have the right to a defence lawyer and to compel witnesses for the defence to appear before the court;

(b) In criminal cases and cases involving employment, maintenance, minors and public order, the administration of justice is free of charge;

(c) The State shall appoint official defence lawyers in respect of the patrimonial rights of the indigenous communities, workers and any person without financial resources.

194. The Supreme Court has established the posts of public defenders in all the high courts of Ecuador. A programme to improve the system of officially assigning counsel for people whose poverty makes it difficult for them to obtain a defence lawyer has also been introduced, with the assistance of the Latin American Institute for the Prevention of Crime and the Treatment of Offenders.

195. However, Ecuador recognizes that, for nationals and foreigners alike, the legal aid service is not effective, owing to a lack of economic and human resources. This leaves many citizens defenceless.

196. In this regard, in order to provide a framework for trial guarantees, the Office of the Public Prosecutor has signed an agreement with the Office of the Ombudsman in order to ensure the “right to a defence”, which considers that the public defenders established by the Supreme Court have no actual capacity for the defence. This and other agreements with the bar associations of all the provinces of Ecuador are insufficient to ensure the effective enjoyment of this right. [\[18\]](#)

197. In this connection, it should be noted that Executive Decree No. 3546 of 17 January 2003 established the Commission for the Application of Criminal Trial Reform, which put forward the bill on the system of public defenders and submitted it to the Office of the President. On 28 June 2004, the President sent this bill to the Congress, where it is now in its second reading.

198. The act on public defenders is aimed at establishing an autonomous institution, absolutely independent of any other State body or function, with its own resources to maintain a roster of defenders, that is, lawyers contracted by the State who, with the support of civil society lawyers, provide an effective service to persons, whether Ecuadorian nationals or foreigners, who do not have sufficient economic resources.

199. Articles 124 and 125 of the Code of Criminal Procedure prohibit persons from testifying against

themselves, and stipulate that such testimony may be regarded only as a basis for investigation.

200. Articles 343 to 348 of the Code of Criminal Procedure establish four legal procedures to enable defendants to appeal to higher courts, according to the situation produced by the handling of the case. They may present or submit the following applications for remedy to the higher courts: for appeal, for annulment, for judicial review for error of fact and for judicial review for error of law.

201. Article 20 of the Constitution stipulates that “the State and other public sector bodies shall be required to compensate individuals for damages incurred by them as a consequence of public services or acts committed by officials or employees of those services in the performance of their duties”.

202. Article 22 of the Constitution guarantees the right of victims to compensation in the event of judicial error, improper administration of justice, acts that may have led to the imprisonment of an innocent party or to his or her arbitrary detention, and ostensible violations of the norms established in article 24 of the Constitution.

203. The Ecuadorian system is designed to ensure that criminal cases are dealt with without delay. Unfortunately, owing to the backlog of pending trials and the lack of funds to set up additional courts or tribunals, the stated time limits are rarely complied with.

204. Despite Ecuador’s comprehensive legislation on guarantees of due process standards, in practice, compliance with such legislation is affected by constraints, particularly of a financial nature.

Article 20: Prohibition of imprisonment, deprivation of authorization of residence and/or work permit and expulsion merely on the ground of failure to fulfil a contractual obligation

205. There is no imprisonment for debt in Ecuador, either for nationals or for foreigners. Article 23, paragraph 4, of the Constitution establishes that no person shall be imprisoned for debts, costs, fees, taxes, fines or other obligations except in the case of family maintenance.

206. This provision has not, however, always been observed. Infringements have occurred, particularly in rural areas. In cases of unpaid debts that came to the attention of the authorities, penalties involving deprivation of liberty were imposed. In order to rectify this situation, since 1994 police superintendents have not had the power to issue arrest warrants. This power was withdrawn to avoid abuses. [\[19\]](#)

207. At present, the powers of police superintendents are restricted to carrying out inquiries to establish material proof, notifying protests against cheques and carrying out the procedural acts ordered by their superiors.

208. Migrant workers do not lose their residence or work permits, nor can they be expelled, on the sole grounds of not having fulfilled an obligation under a contract of employment.

Articles 21 to 23: Protection from confiscation and/or destruction of identity and other documents; protection against collective expulsion; right to recourse to consular or diplomatic protection

209. The Department of Migration of the National Police, under the Ministry of the Interior and Police, is the sole agency with the authority to apply and enforce standards and procedures relating to migration control.

210. The Department of Migration complies with the provisions of the first subsection of article 61 of the

regulations governing the Aliens Act, which establishes that “under no circumstances may any authority retain or withdraw the passport of an alien, for any procedure. When necessary for the relevant procedure, a photocopy of the passport shall be presented, which shall be compared with the original by the official who receives it”. In practice, the Migration Service withdraws personal documents from nationals and aliens only when such persons commit flagrant offences relating to their migration status, for example by assuming a false identity or falsifying documents. Such documents serve as evidence and are handed over to the Office of the Public Prosecutor for the appropriate legal proceedings.

211. Ecuadorian legislation makes no provision for collective expulsion. The terms used in Ecuadorian legislation are “expulsion”, “exclusion” and “deportation”.

212. The Naturalization Act sets out conditions for the expulsion, following notification of the Ministry of the Interior,^[20] of foreigners whose naturalization cards have been cancelled, when this is stipulated by the appropriate executive decree.

213. Exclusion is the measure applied to any foreigner who attempts to enter Ecuador without fulfilling the entry requirements, and who is therefore returned to his or her last port of departure. The person may return to Ecuador immediately, as soon as he or she meets the legal requirements established by the country’s laws and regulations.

214. Deportation is a measure applied to foreign citizens whose regular domicile is in Ecuador and who have violated any of the country’s laws or domestic regulations.

215. The grounds for exclusion are set out in article 9 of the Migration Act, which is the same law that in chapter V establishes the grounds for deportation of foreigners and the procedures to implement that measure.

216. Under article 20 of the Migration Act, the competent authority for the deportation or expulsion of aliens is the police commissioner, subject to the observance of due process. Investigation in such cases is subject to the provisions governing due process contained in article 24 of the Constitution and in the Code of Criminal Procedure.

217. Under the provisions of the Migration Act, it is mandatory for a representative of the deported citizen’s Government accredited in Ecuador to take part in the deportation proceedings.

Deportation proceedings

218. The Office of the Public Prosecutor, the foreigner and his or her private or appointed defence counsel and, if applicable, the representative of his or her Government accredited in Ecuador take part in the proceedings. They present documentation and make arguments of fact and law relating to the deportation action. Within 48 hours, the commissioner issues a ruling, which must then be brought before the Minister of the Interior where a stay of proceedings has been issued in the case of a foreigner subject to the deportation.

219. The Minister of the Interior may confirm or revoke the stay of proceedings within five days following receipt of the file, basing the decision on the merits of the case. Confirmation of the stay of proceedings converts it to a definitive dismissal, in which case the detained foreigner is immediately released and may fully exercise his or her rights, including the right to sue for damages.

220. If the stay of proceedings is revoked, a deportation order is issued, as stipulated by law. In either event, the case is returned with the respective decision to the police commissioner for implementation of the

ministerial decision.

221. The National Police, through the Department of Migration, is responsible for implementing deportation orders. Any foreigner subject to an exclusion or deportation order is transferred to his or her country of origin, i.e., the country from which he or she embarked for Ecuador, the country of domicile before entry, or another country that accepts the person.

222. Migration Service police officers who are aware of an act justifying deportation may carry out a custodial arrest of the foreigner in question so that the police commissioner in the corresponding province can begin the appropriate action. No bail is allowed in such cases.

223. Once a sentence has been served or a defendant has been pardoned, all tribunals and courts exercising criminal jurisdiction in the country are obliged to notify, through their officials, the police commissioner of the respective province that the person in question has been released.

224. If the foreigner subject to a criminal deportation action is in custody, the police commissioner, in carrying out the investigation, must proceed as stipulated in articles 73 and 74 of the Code of Criminal Procedure, in accordance with the law.

225. Restricted residence orders issued by national courts and tribunals do not block the execution of deportation orders that have been approved by the Consultative Council on Migration Policy.

226. Exclusion or deportation orders and the security measures adopted for their implementation are for all legal intents and purposes public documents.

227. When a foreigner has been excluded or deported from Ecuador, the Migration Service of the National Police communicates the personal details and other personal identification information to all its departments in the country and to the Consular Department of the Ministry of Foreign Affairs. The information is made known and distributed to all diplomatic and consular missions of the Ecuadorian foreign service with a view to preventing the person in question from being issued a visa and gaining admission to the country.

228. As mentioned earlier in this report, many of the ordinary legal provisions relating to migration are obsolete and are in urgent need of reform. For example, a police commissioner's issuance of a deportation order against a foreigner is not subject to appeal. Moreover, when a deportation order cannot be executed because it has been issued against a stateless person or a person lacking identity papers, or for any other justifiable reason, the police commissioner in charge of the case orders the foreigner's internment in a prison establishment for up to three years, pending execution of the order; after the three years, the person's stay in the country becomes legal.

229. The same law stipulates that any foreigner subject to Ecuadorian jurisdiction who is responsible for protecting or accompanying a person subject to a deportation or exclusion order may be obliged to leave the country in the same manner and subject to the same conditions as the person so protected or accompanied. This is not, however, applied in practice, as the deportation order is individual and does not affect family members.

230. Regarding the provisions of article 22, paragraph 6, of the Convention, Ecuador recognizes that no measures have been taken to provide a reasonable opportunity, before or after departure, for the deportee to

settle any claims for wages and other entitlements due to him or her and any pending liabilities. [\[21\]](#)

Table 12

Police headquarters	2002					
	Excluded		Deported		Detained	
	Ecuadorians	Foreigners	Ecuadorians	Foreigners	Ecuadorians	Foreigners
Pichincha	196	36	609	200	142	280
Guayas	62	2	497	51	38	61
El Oro	0	0	0	22	161	11
Manabi	0	0	0	31	572	71
Chimborazo	0	0	0	0	0	0
Azuay	0	0	0	0	0	0
Loja	0	0	0	63	0	5
Los Ríos	0	0	0	0	0	0
Tungurahua	0	0	0	49	0	16
Carchi	0	0	33	23	11	79
Bolívar	0	0	0	0	0	0
Imbabura	0	0	0	7	0	24
Cotopaxi	0	0	0	1	0	6
Esmeraldas	0	0	0	24	0	64
Cañar	0	1	0	0	0	0
Pastaza	0	0	0	7	0	15
Morona Santiago	0	0	0	0	0	0
Zamora Chinchipe	0	0	0	2	0	6
Galápagos	0	0	0	0	0	0
Napo	0	0	0	0	0	0
Sucumbios	0	0	0	0	0	2
Total	258	39	1 139	480	924	640

Police headquarters	2003					
	Excluded		Deported		Detained	
	Ecuadorians	Foreigners	Ecuadorians	Foreigners	Ecuadorians	Foreigners
Pichincha	2 009	45	1 190	584	370	972
Guayas	1 104	17	376	237	204	502
El Oro	0	9	0	84	21	92

Manabi	0	0	0	22	526	33
Chimborazo	0	0	0	13	8	19
Azuay	0	0	0	23	53	31
Loja	0	0	0	16	14	19
Los Ríos	0	0	0	18	13	29
Tungurahua	0	0	0	17	21	19
Carchi	28	0	10	131	33	194
Bolívar	0	0	0	12	14	15
Imbabura	0	0	3	61	27	76
Cotopaxi	0	0	0	7	32	12
Esmeraldas	0	0	1	53	20	62
Cañar	0	0	0	18	11	139
Pastaza	0	0	0	4	6	14
Morona Santiago	0	0	0	3	17	22
Zamora Chinchipe	0	0	0	7	16	8
Galápagos	0	0	0	0	0	0
Napo	0	0	0	2	10	13
Sucumbios	0	0	0	28	8	15
Total	3 141	71	1 580	1 340	1 424	2 287

Police headquarters	2004					
	Excluded		Deported		Detained	
	Ecuadorians	Foreigners	Ecuadorians	Foreigners	Ecuadorians	Foreigners
Pichincha	383	135	3 977	657	481	867
Guayas	411	54	1 488	595	330	601
El Oro	1	0	142	829	71	297
Manabi	1	0	323	236	574	105
Chimborazo	0	2	0	123	54	171
Azuay	0	0	6	207	2	269
Loja	27	2	4	103	3	167
Los Ríos	0	0	0	19	0	9
Tungurahua	0	0	0	339	6	292
Carchi	0	48	75	340	0	180
Bolívar	0	0	0	33	0	28
Imbabura	0	0	0	826	0	1 240
Cotopaxi	0	0	0	60	0	3
Esmeraldas	0	94	0	55	42	81
Cañar	0	0	0	104	5	39
Pastaza	0	0	3	46	2	36
Morona Santiago	0	0	0	8	0	8
Zamora Chinchipe	0	1	0	31	2	28
Galápagos	0	0	0	5	0	0
Napo	0	0	0	33	0	31
Sucumbios	0	1	0	47	0	46
Orellana	0	7	0	74	1	66
Total	823	344	6 018	4 770	1 573	4 564

Police headquarters	2005					
	Excluded		Deported		Detained	
	Ecuadorians	Foreigners	Ecuadorians	Foreigners	Ecuadorians	Foreigners
Pichincha	163	237	3 046	467	286	900
Guayas	172	150	967	396	221	381
El Oro	26	7	55	671	56	401
Manabi	0	0	177	134	709	87

Chimborazo	0	0	0	114	102	164
Azuay	0	9	0	251	0	406
Loja	2	14	0	73	1	48
Los Ríos	0	0	0	29	0	48
Tungurahua	0	0	0	176	0	178
Carchi	0	39	5	153	10	117
Bolívar	0	0	0	15	0	18
Imbabura	0	0	10	477	17	515
Cotopaxi	0	0	0	14	0	11
Esmeraldas	0	10	0	10	56	114
Cañar	0	8	0	155	0	122
Pastaza	0	0	0	16	1	16
Morona Santiago	0	1	4	7	0	14
Zamora Chinchipe	0	0	0	12	0	26
Galápagos	0	0	0	0	0	2
Napo	0	2	0	15	0	21
Sucumbios	0	0	0	5	0	25
Orellana	0	10	0	5	0	53
Total	363	486	4 264	3 195	1 459	3 666

Source: Department of Migration.

231. Deportation and exclusion are not applied when a foreigner claims that he or she is likely to be subjected to persecution or in danger of violation of the right to life or physical integrity in the country of origin. In such cases, there is close coordination with the Ministry of Foreign Affairs which, under domestic regulations, has responsibility for granting asylum to aliens.

232. Ecuador is a party to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. Under article 33 of the Convention, “no Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”.

233. Through Executive Decree No. 3301 of 6 May 1992, Ecuador issued regulations for implementation of the provisions of the 1951 Convention and its Protocol. The regulations include the following provisions for the implementation of article 3 of the Convention:

“Article 13. No one shall be refused entry at the border, returned, expelled, extradited or subjected to any measure whatsoever that requires him to return to the territory in which his physical integrity or personal freedom may be at risk for the reasons indicated in articles 1 and 2 of these Regulations. For the purposes of these Regulations, the term ‘border’ shall mean the national border in the strict sense, ports or airports of entry, or the limits of the territorial waters.”

234. These provisions have been scrupulously observed by the Ecuadorian authorities; to date there have been no complaints of deportation of citizens to territories in which there was a possible threat to their physical integrity or personal freedom.

235. While refugee status is acquired by many people who thus legalize their stay in Ecuador, much remains to be done to improve their standard of living. A study carried out by the Regional Foundation for Advisory Services in Human Rights (INREDH) points out that a large number of women workers with refugee status are exploited in Ecuador, since they receive a wage lower than the legal minimum, and many employers pay them

no wage at all because they are undocumented and are unable to press claims out of fear. According to this study, Colombian workers suffer discrimination and reprisals by Ecuadorians when they compete with them in the informal sector. Such discrimination is not limited to labour relations; it is also present in the everyday activities of refugees in Ecuador. [\[22\]](#)

Table 13

Statistics on refugee families in Ecuador

Year	Applications	Accepted	Denied	Cases closed	Cases expired	Total	Cases pending
2000	252	207	33	-	-	240	12
2001	1 298	487	237	454	-	1 178	120
2002	3 384	689	632	911	-	2 232	1 152
2003	7 299	1 667	2 664	2 325	121	6 777	522
Total	12 233	3 050	3 566	3 690	121	10 427	1 806

Statistics on persons with refugee status in Ecuador

Year	Applications	Accepted	Denied	Cases closed	Cases expired	Total	Cases pending
2000	475	390	60	-	-	450	25
2001	3 017	1 406	394	999	-	2 799	218
2002	6 766	1 578	1 199	1 586	-	4 363	2 403
2003	11 463	3 270	4 392	3 616	237	11 515	52
Total	21 721	6 644	6 045	6 201	237	19 127	2 594

Year	Cases			Persons			Cases pending
	Applications	Processed	Percentage	Applications	Processed	Percentage	
2000	252	240	95.2	475	450	95	157
2001	1 298	1 178	90.8	3 017	2 799	93	1 205
2002	3 384	2 232	66.0	6 766	4 363	64	3 320
2003	7 299	6 777	92.8	11 463	11 515	100	7 199
Total	12 233	10 427	86.2	21 721	19 127	88	11 881

236. Moreover, with respect to the provisions of article 23 of the Convention, relating to consular protection and assistance for emigrant nationals, Ecuador has opened 64 consular offices in various countries, with more than one in countries and cities where a large number of Ecuadorians live. In the United States of America, there are eight consular offices, located in Chicago, Illinois; Houston, Texas; Los Angeles, California; Miami, Florida; New Orleans, Louisiana; New York, New York; New Jersey; San Francisco, California; and Washington, D.C. In Spain, there are consulates in Barcelona, Madrid, Murcia and Valencia, that is, where most Ecuadorian emigrants live.

237. The Foreign Service Statute sets out the duties of consular staff in respect of the protection of migrants.

238. Another measure to protect and assist Ecuadorian migrants has been the establishment within the Ministry of Foreign Affairs of the Office of the Director-General for Ecuadorians Living Abroad. The Office is directly involved in protecting the human rights of Ecuadorian migrants and their families, irrespective of

their legal status.

Articles 25, 27 and 28: Principle of equality of treatment in respect of: remuneration and other conditions of work and terms of employment; social security; and right to receive urgent medical care

239. The Constitution guarantees equality of rights between nationals and foreigners, with the exception, established by the Constitution, of political rights and the restriction established in article 569 of the Labour Code. The latter stipulates that any foreign citizen who enters the country for the purpose of working in an employment relationship must have a work permit issued by the Department of Employment and Human Resources. In all other respects, the law guarantees foreign workers the same rights as those enjoyed by Ecuadorian workers.

240. An exception is made with regard to the work permit. Persons holding a residence visa do not require a work permit.

241. In general, both the Constitution and the labour laws protect both the rights established by law and those acquired through an employment contract, whether individual or collective. These rights include the right to a minimum length of employment as stipulated in the contract; a minimum wage, which varies according to the profession; women's rights and children's rights; and the maximum and minimum number of hours worked. As already mentioned, the Constitution prohibits any kind of discrimination on grounds of sex, race, nationality or religion.

242. When migrant workers' rights are violated, the workers may file complaints with the labour authorities to advance their claims in the same manner as Ecuadorian citizens. If the claim is administrative in nature, they may file and substantiate it with the respective and competent regional labour offices. If the dispute(s) cannot be settled through administrative channels, the foreign citizen may defend his or her rights before the courts.

243. When a person is in an irregular situation, this does not prevent him or her from putting forward claims through both administrative and judicial channels, in accordance with international standards, including the present Convention and the Andean Labour Migration Instrument (Decision 545). It must be recognized, however, that such instruments are not invoked in practice, as the judicial authorities and attorneys who deal with such cases are not aware of them.

244. The documents required of foreigners in a new job are the social security card, if the person has previously worked in Ecuador, the withholding tax certificate issued by the company for which the person previously worked, and the employment card or work permit.

245. Some of the most important workers' rights are described in detail below.

246. When an employer wishes to dismiss an employee in circumstances other than when a contract for a specific service or a fixed-term contract ends, the employer must pay compensation, which is determined on the basis of the worker's wage and the period worked. If the employer can invoke a just cause such as excessive absence, tardiness, insubordination, theft or poor performance, the employee receives 30 days' leave, during which time a labour inspector considers the employer's complaint. The wage for the month in question is held in escrow by the inspector and is paid to the worker if the investigation concludes that the employer's complaints are unfounded, in which case the employee returns to work. If the investigation concludes that the dismissal is justified, the money is returned to the employer.

247. For most contracts that do not specify a schedule of work, Ecuadorian labour law establishes a minimum

and maximum number of working hours. The minimum is 40 hours a week, with overtime limited to 3 hours a day, not to exceed 12 hours a week. Such restrictions may, however, be modified with the authorization of a representative of the Ministry of Labour and Human Resources, or by mutual consent of the employer and the employee.

248. All employees who have worked a year at the same company are entitled to two weeks' uninterrupted paid vacation. From the sixth year at the same company, the employee is entitled to an additional day of paid vacation for each additional year of work, up to a total of 30 days. In addition, there are paid national holidays.

249. Wages over the minimum wage are negotiated between the employee and the employer, who must also provide the following supplementary income for any full-time employee: a thirteenth month equal to one twelfth of the wages received during the year, which must be paid every December; a fourteenth month equal to twice the monthly general minimum living wage, payable in April in the coastal region and in September in the mountains and the east.

250. All employers and their employees must contribute to the Ecuadorian Social Security Institute (IESS), and have the right to receive its entitlements and assistance. Employees contribute 9.35 per cent of their monthly wage, while employers must contribute 12.15 per cent of the monthly wage of each worker.

251. Employers must make annual contributions to the Ecuadorian Social Security Institute equal to an average monthly wage based on the amount earned in a year, as from the second year of work, for each year that the worker remains in his job. The money is deposited in a "reserve" fund managed by the Institute; employees may withdraw their money at their discretion.

252. Pregnant workers and mothers enjoy certain benefits accorded by law and by the statute of the Ecuadorian Social Security Institute. The law imposes stiff penalties on employers who knowingly dismiss a woman for no reason other than the fact that she is pregnant. Pregnant women are entitled to take leave of absence beginning 2 weeks before the expected delivery date and ending 10 weeks after they give birth; they also have the right to finish the workday 2 hours early for a period of 9 months following the birth.

253. Foreigners wishing to work and reside in Ecuador must obtain a non-immigrant category VI work visa, which permits foreigners to carry out remunerated work in the country. This visa may be obtained at the nearest Ecuadorian consulate prior to travel to Ecuador or, if the person is already in the country, at the Ministry of Foreign Affairs.

254. Authorization to issue the work visa is given by the Ministry of Labour, through the Department of Employment and Human Resources, once the required documentation is presented showing that the foreigner will be employed under contract in Ecuador.

255. The regulations governing the Aliens Act stipulate that this visa is issued subject to the following rules:

(a) Persons applying for entry into the country must demonstrate to the satisfaction of an Ecuadorian foreign service official that there is a temporary need to use the services of a foreigner in the activity in question or for vocational training, and that, at the time of application and at the place of work, there are no lack of qualified Ecuadorians for the performance of such tasks;

(b) Immigration must be requested by the foreigner, or by the party - a natural or legal person - interested in his or her immigration. The employment contract and certification issued by the Department of Employment and Human Resources referred to in article 548 of the Labour Code must be presented, along

with the papers appointing a legal representative or power of attorney issued in accordance with article 120 of the Private Commercial Code, with presentation of the contract of employment in Ecuador. If the foreigner has been recruited for vocational training, the respective agreement must be presented;

(c) The standards of article 33, paragraphs II, IV, V and VI, of the regulations shall apply to this category, as appropriate;

(d) The visa shall remain in effect for single- or multiple-entry applications, and the authorized period of stay for each entry shall be the duration of the agreement or contract.

256. Foreigners who can demonstrate that the employment relationship is based on an open-ended contract may change their migrant status and receive a category IV immigrant visa from the Office of the Director-General for Aliens.

257. The Ministry of Labour has stipulated that it is mandatory for foreigners with a category 12 VI work visa to train Ecuadorian staff in the fields for which they were contracted, on the understanding that they occupy posts in Ecuador that cannot be filled by nationals because of the specialization required.

258. Many work visas have thus been issued to technical staff working in petroleum companies and in the financial sector.

259. As for the social security system applicable to immigrants, the Ecuadorian Social Security Institute has complied strictly with the provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, providing social security services without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, age, economic position, property, marital status, birth or other status. [\[23\]](#)

260. The benefits and services granted to foreign workers and their families are subject to the same conditions and requirements established for nationals. In addition, there is strict compliance with the provisions of the General and Additional Agreements between Ecuador and Spain concerning Social Security, signed on 1 April 1960.

261. The Ecuadorian Social Security Institute currently provides its members with services aimed at protecting the health of insured persons whether or not they are working, persons faced with old age, widowhood or orphanhood, persons exposed to occupational hazards or persons who must overcome a financial emergency. The main benefits are listed below.

262. Old age, disability and death insurance, providing coverage for:

(a) Ordinary old age retirement benefits for members 65 years of age who have made 360 monthly contributions. The Institute grants a pension equivalent to 75 per cent of average salary over the best five years, and for those who have made 420 contributions, without any age limit;

(b) Temporary or permanent, partial or total disability retirement benefits for persons with a minimum of five years of contributions;

(c) Special early retirement for persons who have made 300 monthly contributions and who are at least 45 years of age;

(d) Special retirement schemes for teachers and for workers in the Ministry of Social Welfare, telecommunications and graphic arts and industries;

(e) A death benefit, upon the death of an insured affiliate member, the Institute provides 10 times the monthly general minimum living wage, and 11 times the monthly general minimum living wage for funeral expenses;

(f) A death benefit in cases of industrial accidents of 26 times the monthly general minimum living wage.

Widow/widower's benefits provided by the Ecuadorian Social Security Institute

263. Survivors of the deceased receive: monthly dependents' pensions for widows/widowers or orphans, a death benefit, and unemployment and reserve benefits if the deceased was actively employed and had accumulated such benefits. Widows have access to sickness insurance on payment of 4.15 per cent of the monthly pension that they receive as beneficiaries. The following benefits should be mentioned:

(a) Widow/widower's and orphan's pensions: benefit acquired with 60 contributions, including for members' children up to the age of 18, and for disabled persons of any age;

(b) Social services for the elderly: the Institute operates occupational workshops and recreation centres for this purpose throughout the country;

(c) Mortuary services in five cities in Ecuador.

Sickness and maternity insurance

264. Entitlement to this insurance is acquired when the contributing worker completes 6 months of contributions, or 12 months in the case of voluntary membership; there is no waiting period for retired persons and widows.

265. This insurance provides comprehensive medical, dental and pharmaceutical care; it covers hospitalization costs and provides monetary support when the illness results in a work disability. The Institute provides maternity coverage, including medical and obstetric antenatal, natal and postnatal care and comprehensive medical care for the child of a beneficiary for the first year of life.

Unemployment and occupational risk insurance

266. Unemployment insurance consists in the allocation of an accumulated amount for persons who have made at least 24 payments and who are forced to leave their jobs or who do so of their own accord, and are unemployed for a period exceeding 60 days.

267. Occupational risk insurance protects workers against temporary disability, permanent partial or total disability and complete permanent disability, and provides pensions for widows or widowers and orphans. It also provides services aimed at preventing occupational risks, including mandatory prevention work at public and private enterprises in order to reduce industrial accidents and illnesses.

Additional general services

268. These may be divided into:

- (a) Social services: health services and preventive medicine, and special education grants for disabled children;
- (b) Financial services: provision of unsecured credit, special loans for disabled persons and in cases of financial emergencies, administration of reserve funds and of additional and special unemployment and retirement funds.

269. The only persons barred from such insurance coverage are:

- (a) Employers, at their companies;
- (b) Partners, shareholders and co-owners of general partnership enterprises and companies;
- (c) The spouse, children under the age of 18 and parents of the owner, who work exclusively for their spouse, parent or child, respectively;
- (d) The President or Vice-President of the Republic and Ministers of State;
- (e) Deputies, owing to their status as such;
- (f) Persons receiving common disability pensions or total or partial disability benefits from industrial accident and illness insurance.

270. When the affiliation of partners, shareholders and co-owners of general partnership enterprises and companies who have contributed to the Ecuadorian Social Security Institute is declared "void" because they are owners and when such persons do not continue to be insured on a voluntary basis, the Institute returns the total amount of personal and employers' contributions, discounting only the value of the employers' services and benefits that have been granted.

271. Affiliations are declared void by the benefits boards in their respective jurisdictions. Appeals may be made to the National Appeals Board.

272. In addition, the Ecuadorian Social Security Institute has subscribed to the General and Additional Agreements between Ecuador and Spain concerning Social Security and the Administrative Agreement for the application of the Agreement between Ecuador and Spain. These agreements stipulate that:

- (a) Waiting periods for the granting of medical assistance and maternity benefits are eliminated when a worker affiliated with one country's social security scheme transfers to the scheme of the other country;
- (b) If the member happens to be in the other country, he or she may receive medical assistance in the event of an emergency;
- (c) Specialized surgical care and the corresponding rehabilitation treatment are charged to the member's institution;
- (d) For an insured person in Ecuador or Spain who has not worked for the required qualifying period to receive disability and old age benefits in either country, the time worked in each country is counted.

273. With regard to article 28 of the Convention, in Ecuador the services of the operational units of the

Ministry of Public Health are provided to the entire population, without distinction as to race, social condition, origin or nationality. [\[24\]](#) Both outpatient and inpatient benefits are granted to all persons requesting them on an equal basis. For example, the benefits covered by the Free Maternity and Childcare Act are all provided free of charge; for other benefits, the rates established and adopted by law are applied equally to all.

274. There is currently no detailed information on the origins of users of public medical services. We are unfortunately unable to include such figures in this report.

275. Lastly, the Constitution, in accordance with articles 42 and following, guarantees public health programmes for the promotion, protection, funding and adoption of policies to optimize the level of health both of individuals and of families in the various strata of society, whether at work or in the community.

276. Additionally, specific measures are being carried out to improve women's access to health services, for example by increasing the number of health professionals in rural areas. The Ministry of Public Health has 27,761 officials and employees working to provide such services.

277. Ecuador has been guided by article 42 of the Constitution, which guarantees the right to health in accordance with the principles of equity, universality, solidarity, quality and effectiveness.

278. The National Health Plan sets the objective of guaranteeing, on a basis of solidarity, access to comprehensive health services for all families living in Ecuador. In order to meet this objective, the State is creating the technical and legal conditions that will make it possible to provide services through the establishment of a decentralized and participatory national health system.

Articles 29, 30 and 31: Right of a child of a migrant worker to a name, registration of birth and nationality; access to education on the basis of equality of treatment; respect for the cultural identity of migrant workers and members of their families

279. Ecuador considers that children of foreigners residing in Ecuador who are born in Ecuador have the right to have their births registered by the civil registration authorities, with the sole requirement being the presence of the parents and presentation of their identity documents. Under the Constitution, Ecuador grants citizenship to any child born in its territory, without prejudice to the migration status of the child's parents. [\[25\]](#) This is in keeping with the provisions of the Convention on the Rights of the Child and with the present Convention.

280. Registration of a child born in Ecuador ensures that the child's foreign parent is issued an indefinite category 9-VI dependent's visa, thus legalizing the parent's stay as an immigrant. [\[26\]](#)

281. There are, however, still parents who fail to register their children out of ignorance of the law and fear of deportation.

282. According to information provided by the Civil Registration Department, 18,271 children born to foreign parents have been registered in its electronic database since 2000. [\[27\]](#)

283. In addition, Ecuador recognizes dual or multiple nationality. Children of Ecuadorian parents born abroad may also acquire Ecuadorian citizenship by birth through consular registration in the country of origin or by means of recognition of citizenship by birth, a procedure carried out at the Ministry of Foreign Affairs following registration by the civil registration authorities.

284. This also enables foreign relatives to request a dependent's visa, as mentioned above.

285. From 2000 to 2005, Ecuadorian nationality was recognized for approximately 1,000 persons. There was an increase in the number of children born to Ecuadorian parents in Colombia, in particular in the border region and, since 2002, a large number of children of Ecuadorian immigrants have been born in Spain. [\[28\]](#)

286. With regard to article 30 of the Convention, on the basis of article 66 of the Constitution, the State guarantees education for any person - whether Ecuadorian or foreign - residing in the country. The article reads as follows:

“Education is a right that cannot be waived, the necessary duty of the State, society and the family; a priority area of public investment, a requirement for national development and a guarantee of social equity. It is the State's responsibility to define and carry out policies that make it possible to attain these objectives.

“Education, which is based on ethical, pluralist, democratic, humanist and scientific principles, shall promote respect for human rights, develop critical thinking and encourage civic-mindedness; provide skills to ensure efficient labour and production; stimulate the creativity, the full development of the personality and the special abilities of every person; and foster multiculturalism, solidarity and peace.

“Education shall prepare citizens to work and to produce knowledge. At all levels of the education system, students shall be provided with extracurricular activities that encourage the practice and production of crafts, trades and skills.

“The State shall guarantee education for persons with disabilities.”

287. Public education is secular at all levels; compulsory up to primary level and free of charge up to the baccalaureate or equivalent. Public schools provide social services free of charge to anyone in need of them. Students living in extreme poverty receive specific subsidies.

288. Ecuador develops ongoing education plans and programmes to eliminate illiteracy and, as a matter of priority, to improve education in rural and border areas.

289. The State guarantees an intercultural and bilingual education system, using the language of the respective culture as the principal language of instruction, and Spanish as the language of intercultural relations.

290. The law establishes bodies and procedures to ensure that the national education system periodically reports to the public on the quality of teaching and its relationship with national development needs.

291. The Ministry of Education does not have statistical data on the number of foreign or Ecuadorian students or on the children of foreign parents who attend the various levels of education in Ecuador. However, it has never received a complaint in this regard.

292. Requirements for registration of foreign students:

(a) Primary level: birth certificate, health certificate issued by a regional health centre, qualification certificate duly certified by the embassy or consulate of the country of origin and endorsed by the school board of the provincial education department of the receiving establishment, if the student has already completed

studies at the same level in the country of origin, three passport-size photographs of the student (optional) and placement at the same level or grade, as decided by the receiving establishment;

(b) Intermediate level: birth certificate, certificate of completion of primary education certified by the consulate of the country of origin and endorsed by the school board of the provincial education department where the educational establishment receiving the student is located, registration forms and graduation certificates for the years of study in the country of origin, duly certified by the embassy or consulate and endorsed by the school board of the provincial education department of the receiving establishment, if the student has already completed studies at the same level in the country of origin, and placement of the student in the appropriate year of study by the receiving establishment. [\[29\]](#)

293. With regard to article 31 of the Convention, Ecuador guarantees freedom of education and academic freedom, rejects all forms of discrimination, recognizes the right of parents to choose education for their children in accordance with their principles and beliefs, favours co-education and promotes gender equality. In Ecuador, political propaganda and proselytism are prohibited in educational establishments.

Articles 32 and 33: Right to transfer earnings, savings and personal belongings; right to be informed

294. Ecuador complies with article 13 of the Andean Labour Migration Instrument regarding the transfer of earnings, which stipulates that member States shall guarantee the following to Andean migrant workers:

(a) Freedom to transfer money earned from work, in accordance with the relevant legal provisions on tax obligations and court orders;

(b) Freedom to transfer sums owed by migrant workers in payment of food, which can never be prevented;

(c) Income from work will be taxed only in the country in which it was earned.

295. In Ecuador, the transfer of earnings is regulated by the Financial Institutions Act and monitored by the Office of the Superintendent of Banks. The majority of immigrants in a regular situation are eligible for this right.

296. The transfer of personal effects and other belongings by migrant workers on termination of their stay in Ecuador is provided for in the Customs Act, which stipulates that there is no obstacle to such transfer, provides a simple procedure and establishes the requirement that purchase invoices certified by the consulate must be presented. [\[30\]](#)

297. With regard to transfers to Ecuador by Ecuadorian emigrants living abroad, on 30 August 2006 the Central Bank of Ecuador signed an agreement with La Caixa Savings Bank and Pension Fund in Barcelona with a view to reducing the costs of sending remittance earned by Ecuadorian emigrants resident in Spain. Transfer is carried out via the Central Bank's interbank payment system, which allows the Central Bank to be connected in real time to national financial institutions. Migrants can send money through 5,100 branches of La Caixa in Spain, and the recipients can collect it at 54 financial institutions in Ecuador (16 banks, 5 mutual savings banks and 33 cooperatives). Once the financial institution has confirmed receipt, clients are informed that their money has arrived by the telephone centre of the Central Bank of Ecuador.

298. La Caixa customers can send a maximum of €3,000 a month for a fixed charge of €2.90; recipients in Ecuador are not charged for collecting the money or for currency exchange. This service is also available for non-customers, who can send a maximum of €1,000 per month for a charge of €3.90 for each transaction.
299. Immigrants with category 9-I visas can live in Ecuador on deposits abroad, since this is the basis of their migration status in Ecuador. The Aliens Act sets the minimum required income at US\$ 800 and established the rules [\[31\]](#) listed below.
300. In order for the visa to be granted, it is necessary to prove to the Director-General for Aliens that the foreigner has access to deposits from abroad, and that the income gained from these deposits or any other regular income from abroad is not less than the equivalent of US\$ 800 a month.
301. If immigration of family members is requested, the minimum required income increases by US\$ 100 a month for each person.
302. The income referred to in the two preceding paragraphs can be proved in one of the following ways:
- (a) By setting up a trust or making a cash deposit in the Central Bank of Ecuador or in a national lending institution determined by the Consultative Council on Migration Policy. Cash deposits must be authorized by the Consultative Council on Migration Policy and must be equivalent to five-year pensions. The visa is granted once the deposit has been set up. After an immigrant has been admitted, when registering, he or she receives a permit to withdraw the authorized monthly amount. Foreigners who decide to set up a trust must obtain prior approval from the Consultative Council on Migration Policy, and income received as a result must be not less than the minimum indicated;
 - (b) By presenting a certificate issued by an official of the Ecuadorian Foreign Office showing that the immigrant has access to income of any type for the minimum amount or amounts indicated. The certificate must be supported by authorized copies of documents confirming that the income in question will continue.
303. Since 2005, foreigners holding immigrant visas for commercial and industrial investors are required to invest a minimum of US\$ 25,000 in Ecuador in order to demonstrate that the purpose of the investment is for trade or establishing industries.
304. The right of migrant workers to receive information is covered under article 37.

**Part IV of the Convention: Other rights of migrant workers and members
of their families who are documented or in a
regular situation**

**Article 37: Right to be informed before departure of the conditions of admission in the State of
employment and their remunerated activity**

305. The Association for International Cooperation and Humanitarian Aid (ALISEI), Migrant House, the Ecuadorian Centre for the Promotion and Action of Women (CEPAM) and the Archdiocese of Cuenca and the Migrant Support Centre in Guayaquil have published a guide entitled “Thinking of migrating? Find out more” to provide adequate information to citizens before they decide to migrate. The guide, which was widely distributed, is clear and informative and is intended for persons who are thinking of leaving the country and who have family members living abroad.

306. Some State institutions, such as municipalities, in coordination with NGOs that address migration problems, have conducted various information campaigns for Ecuadorian citizens who wish to migrate abroad, particularly since the mass exodus of Ecuadorians to Europe began in 2000.

307. As already indicated, the Office for the Recruitment of Migrant Workers is making considerable efforts to provide information, on the basis of the following agreements:

(a) Letter of understanding between the Government of Ecuador and the International Organization for Migration (IOM) on the operation of the Office for the Recruitment of Migrant Workers, signed on 7 February 2002;

(b) Implementation agreement between the Government of Ecuador and IOM on the project for the operation of the Office for the Recruitment of Migrant Workers within the framework of the implementation of agreements on migration flows, signed on 2 July 2002;

(c) Cooperation agreement for the administration of financial resources between the Government of Ecuador and IOM on the project for the operation of the Office, signed on 2 August 2004;

(d) Cooperation agreement for the administration of financial resources between the Government of Ecuador and IOM on the project for the operation of the Office, signed on 18 February 2005.

308. The process of recruiting Ecuadorian workers begins in Spain with a job offer from a Spanish employer, submitted in the legally established form by the Migration Planning Department of the Spanish Ministry of Labour and Social Affairs.

309. This Department obtains a report by the Spanish National Employment Institute on the national employment situation for the requested occupation. Once this procedure has been carried out, the prospective employer submits the legally established model contract, duly signed, to the Spanish authorities. The authorities approve the model contract by assigning it a control number in accordance with Spanish legislation.

310. The Spanish Government sends the offers of employment through the diplomatic channel to the Government of Ecuador, which provides information on the availability of workers to fill the positions offered.

311. The Ecuadorian Ministry of Foreign Affairs transmits the offers to the Office for the Recruitment of Migrant Workers, where the following process is carried out.

312. Persons wishing to migrate to Spain enter their complete personal history into a database, organized according to the occupational sectors given in the Spanish National Occupational Classification System.

313. On the basis of offers, the Office for the Recruitment of Migrant Workers searches for candidates who exactly match the requested occupational profile, with complete transparency and with no charge for the interested party.

314. The Office sends electronically the curriculum vitae of each shortlisted worker to the Spanish Ministry of Labour and Social Affairs, which evaluates the sample and sets a time and date for recruitment in the country of origin.

315. In some cases, the company requests to carry out recruitment itself and sends its own specialists to Quito. In other cases, it entrusts the task to specialists hired in Ecuador or to the Spanish civil service, which always

works closely with the Office for the Recruitment of Migrant Workers. In all cases, the recruitment process is managed by the Office.

316. When the recruitment process is completed, an agreement is signed between the administrations involved, stating the name and identity card number of each worker selected.

317. The main responsibility of the Office is to interview candidates, evaluate their skills and qualifications, check the certificates submitted and assign them an occupational code at the level of the last digit of the Spanish occupational Classification System.

318. Details of each worker's personal, employment, family, education and migration history are stored in a digital file with the worker's photograph, also digital, so that they can be sent electronically. By September 2006, the database had information on 28,000 applicants. There are 8,000 candidates participating in the various processes.

319. The Office for the Recruitment of Migrant Workers provides workers whose profile meet the requirements of Spanish companies.

320. Recruitment is important, but it is not the Office's only function. The Office continues to provide assistance to selected workers in obtaining documents (before they obtain a visa, work permit and residence permit), signs contracts, makes travel arrangements and provides all relevant information concerning their stay and reception in Spain.

321. Another important function of the Office for the Recruitment of Migrant Workers is to obtain travel loans, make reservations, update on a daily basis the lists of persons travelling and the status of arrangements for each individual, since there are always changes by both workers and companies. Such changes must be communicated to and approved by all parties concerned, including airlines, in order to avoid penalties.

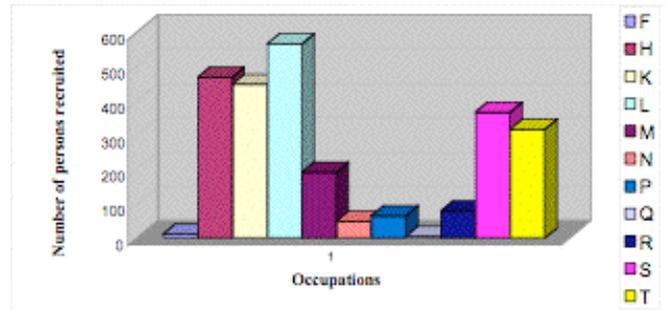
322. Between the beginning of the project on 18 March 2002 and September 2006, 37 workers were recruited and 95 per cent of the positions filled. Ecuador considers this highly satisfactory. In order to fill each post, it was necessary to interview an average of only 2.77 workers.

323. With regard to the distribution of the recruited workers, the groups most in demand were qualified agricultural workers (21 per cent) followed by hotel and catering workers (18 per cent), shop assistants working for large shopping centres and supermarkets (17 per cent), unskilled service workers, such as domestic workers and cleaning staff (14 per cent) and construction workers (13 per cent).

324. An updated table on the recruitment process is provided below.

Table 15

Number of persons recruited by general occupation, to June 2006



Code	Description	No.	%
F	Technicians and support staff	12	0
H	Hotel and catering workers and personal service workers	469	18
K	Shop assistants	448	17
L	Skilled agricultural workers	565	21
M	Skilled construction workers	192	7
N	Skilled workers in the extractive, metallurgical and machine construction industries	50	2
P	Skilled workers in the food industry, cabinetmakers and artisans	65	2
Q	Operators of industrial installations and fixed machinery; fitters and assemblers	6	0
R	Drivers and operators of mobile machinery	79	3
S	Unskilled service workers	367	14
T	Unskilled labourers in agriculture, construction and the manufacturing and transport industries	317	12
U	Unskilled transport labourers and loaders	90	3
	Total recruited	2 660	100

325. The evaluation of experience gained over the three and a half years that the project has been in operation has been highly positive, both from the point of view of the Government of Spain and the employers who took part in the various recruitment processes under the Agreement between Ecuador and Spain concerning the Regulation and Management of Migration Flows.

326. On 14 July 2006, IOM approved a project with the Ministry of Foreign Affairs to strengthen the Office for the Recruitment of Migrant Workers which will be financed through the 1035 Facility with a budget of US\$ 50,000 over a period of eight months beginning in August 2006.

327. With the same aim of providing information, Ecuador established the Labour Migration Office in 1971 pursuant to article 17 of the Andean Labour Migration Instrument (Cartagena Agreement, Decision 545). The Labour Migration Office is an integral part of the Department of Employment and Human Resources.

328. In addition to implementing Ecuador's labour migration policy on Andean migrant workers and monitoring their work situation, the Labour Migration Office has the following functions:

(a) Organizing campaigns to disseminate, and provide guidance and information concerning, the rights of migrant workers, in accordance with the legislation of the Andean Community and of each country;

(b) Providing information, particularly to employers and their organizations and to workers, about policies, laws and regulations on labour migration;

(c) Informing Andean migrant workers and members of their families about work permits and about working and living conditions in the country of immigration;

(d) Exchanging information, holding consultations and working closely with the competent authorities of other member States.

329. The State is also supported by the guide centres of the Trade Union Institute for Development Cooperation in Quito and Guayaquil, which assist workers who want to emigrate to Spain or who are in Spain and want to return. They also work closely with all the guide centres of the General Workers Union in Spain, exchanging information and different activities for solving problems that arise.

330. There are also other departments in Ecuador that provide information: the Office of the Director-General for Aliens, which is part of the Ministry of Foreign Affairs, some of the functions of which were mentioned in the replies concerning article 23, on consular or diplomatic protection; and the Office of the Director-General for Aliens within the Ministry of the Interior, which also deals quickly, appropriately and transparently, within the scope of its competence, with requests from foreigners who wish to remain in the country, prior to fulfilling the legal requirements.

Articles 38 and 39: Right to be temporarily absent without effect on authorization to stay or to work; right to liberty of movement in the State of employment and freedom to choose residence there

331. Taking into account the obligations that must be met by migrant workers in their State of origin, article 36 of the regulations governing the Aliens Act establishes that “any (resident) immigrant who is legally registered can be absent from and return to the country, but cannot remain abroad for more than 90 days each year in the first two years following the date of admission as an immigrant or more than 18 consecutive months at any time without losing his or her migration category and status and having their documents cancelled”.

332. Article 23, paragraph 13, of the Constitution of Ecuador guarantees Ecuadorians and foreigners residing legally in the country “the right to travel freely throughout the national territory and to choose a place of residence”.

333. There are no legal provisions that restrict the foreigners’ freedom of movement in the country. Many foreigners reside in Ecuador and travel around the country to admire its natural beauty and culture, as well as to make investments, which are safeguarded by appropriate legislation.

334. The exercise of these rights was covered in the replies concerning articles 8 and 22.

Articles 40, 41 and 42: Right to form associations and trade unions; right to participate in public affairs of the State of origin and to vote and stand for election in that State; procedures or institutions taking care of the needs of migrant workers and possible enjoyment of political rights in the State of employment

335. Under Ecuadorian legislation, everyone has the right to associate with others in promoting, exercising and protecting their legitimate interests of a political, economic, religious, social, cultural or professional

nature, trade union interests or any other type of interest.

336. Freedom of association is established in the Labour Code beginning with article 447. Workers and employers, without distinction and without the need for prior authorization, have the right to constitute such professional associations or trade unions as they may deem appropriate, to join them or to withdraw from them, in compliance with the law and the statutes of the associations in question.

337. Professional associations or trade unions have the right to form federations, confederations or any other trade union groupings, and to join them or to withdraw from them or from international workers' or employers' organizations.

338. All workers over 14 years of age may belong to a professional association or trade union.

339. Organizations of workers may be suspended or dissolved only as a result of a judicial procedure.

340. Workers' associations of all types are under the protection of the State, provided that they pursue one of the following aims:

- (a) Vocational training;
- (b) Culture and education of a general nature or applied to the relevant branch of work;
- (c) Mutual support through the formation of cooperatives or savings banks;
- (d) Other aims involving the economic or social advancement of workers and protection of their class interests.

341. Foreigners do not have the right to vote or stand for election, to submit bills to the Congress, to be consulted in the cases provided for in the Constitution, to supervise the acts of government bodies, to revoke the mandate conferred on dignitaries in popular elections or to work or perform public duties. However, foreigners are fully at liberty to form associations and to elect their own leaders who represent them before the government authorities and express their needs and uphold their rights.

342. Foreigners who have acquired Ecuadorian citizenship through naturalization and who, by virtue of the applicable constitutional rules of their respective countries of origin, which allow them to maintain their political rights through the institution of dual citizenship, may exercise this right before the respective consular authorities of their country in accordance with its own domestic legislation.

343. Ecuadorians through naturalization have the same rights as Ecuadorians by birth with the exceptions established by law, including in particular the right to hold public offices expressly reserved for Ecuadorian citizens by birth.

Articles 43, 54 and 55: Principle of equality of treatment with nationals of the State of employment in relation to the issues indicated; equality of treatment with regard to protection against dismissal, unemployment benefits and access to public work schemes and alternative employment; equality of treatment in the exercise of a remunerated activity

344. Equality of treatment in relation to employment benefits, protection against dismissal, permission to engage in a remunerated activity, access to alternative employment in the event of loss of work, unemployment

benefits for nationals and foreigners and the right to appeal to the authorities if their employer violates the terms of their work contract were covered in the replies concerning articles 25, 26 and 49.

345. Ecuador wishes to reiterate that migrant workers enjoy equal treatment with nationals with regard to access to educational institutions and services; access to vocational guidance and placement services; access to vocational training and retraining facilities and institutions; access to housing and protection against exploitation in respect of rents; access to social and health services; access to cooperatives and self-managed enterprises; access to and participation in cultural life; and access to public work schemes intended to combat unemployment. In general, no form of discrimination against foreigners exists regarding access to these services, once legal requirements have been met. However, since these services are provided by the State, regardless of whether they benefit nationals or foreigners, no statistical data exist that allow accessibility to be evaluated in practice.

346. In addition, in order to improve the quality of life of migrant workers and their families, Ecuador has carried out various social programmes, mainly in border areas where a considerable number of Colombian and Peruvian migrants have settled.

347. The Northern Development Unit (UDENOR), established by Executive Decree No. 640 of August 2000, coordinates sustainable social investment policies, focusing on preventive alternative development in the northern border region. Its aim is to contribute, through coordination and the securing of State resources and international cooperation, to comprehensive and sustainable preventive alternative development in the northern border region and to improve the quality of life of the population in an ethical context of social, economic, cultural and political inclusion.

348. The programmes carried out by UDENOR benefit both nationals and foreigners, regardless of their migratory status.

349. The programmes are being carried out under the Inter-Institutional Cooperation Agreement on Northern Border Development between the United States Agency for International Development (USAID) and UDENOR. The International Organization for Migration is the technical operator of the Agreement.

350. UDENOR plans to carry out 70 projects with an investment of approximately US\$ 7,314,279. The projects will be implemented by the autonomous regional governments under the coordination and supervision of UDENOR. [\[32\]](#)

351. Between 2001 and September 2006, 105 drinking water systems and 35 sewage systems were built in the six northern provinces, directly benefiting some 200,000 persons. Five roads were improved, three streets were resurfaced and 54 vehicle and pedestrian bridges were constructed, 10 irrigation canals were built, and a retaining quay wall was constructed. This work will benefit some 125,000 persons on the northern border.

352. Since October 2005, IOM has also been carrying out an emergency assistance programme for the refugee population created by the conflict around the Colombian border. Funding for the programme is provided by the Department of State of the United States of America. Since the beginning of the programme, work has been carried out in close cooperation with the Ministry of Foreign Affairs and various organizations, such as UNHCR, the Ecuadorian Red Cross and the International Civil Defence Organisation.

353. The first step was to make a preliminary assessment to determine the activities to be carried out in localities in Ecuador's northern border region. The assessment was made on the basis of field information and information from secondary sources.

354. In November 2005, Colombians were recorded as entering San Lorenzo in Esmeraldas, and Lago Agrio in Sucumbíos. At the same time that these entries occurred, the above-mentioned assessment was being carried out in the field, through surveys in homes, institutions and neighbourhoods. The fact that these two events took place simultaneously facilitated access to information about the needs of the displaced population. It is important to mention that IOM has a physical presence at the border, which made possible a rapid and efficient response.

355. Activities carried out during the displacements included: placing 521 refugees in shelters; providing the displaced population with food and basic tools; providing drinking water for such persons; and carrying out emergency improvements to sewage and electrical systems in order to provide drinking water and sanitation.

356. Once the information obtained in the assessment had been analysed, 11 projects were planned. Some of the projects are in progress, others have already been completed; they include:

- (a) Improving and building six classrooms and sanitary facilities in three schools;
- (b) Building a shelter in San Lorenzo;
- (c) Improving the kitchen, dining room and bathrooms of the Comboni Mission shelter in San Lorenzo;
- (d) Emergency pilot plan for providing emergency homes;
- (e) Support for the legal process for examining applications for refugee status - Ministry of Foreign Affairs, Refugee Office;
- (f) Providing generators for shelters;
- (g) Developing contingency plans;
- (h) Providing mattresses and communal kitchen utensils for the government of Puerto El Carmen;
- (i) Providing mattresses and communal kitchen utensils for the government of Tufiño;
- (j) Developing and setting up technological information services in refugee situations;
- (k) Developing workshops on disease prevention and first aid.

357. Despite these efforts, however, the Ecuadorian and Colombian population living in the northern border region face extreme poverty, and the presence of a large number of Colombian immigrants has created economic conflicts because economic conditions in Ecuador are not suitable for them to settle there. According to a field research investigation conducted by a group of professionals from the Andean University, in Carchi Province (northern border region), there is a worrying lack of infrastructure and school equipment, teaching staff, health-care posts, health professionals, medicine and medical equipment. Ecuadorians and Colombians are cared for without discrimination in this region, since both population groups are living in extreme poverty. [\[33\]](#)

358. It also emerged from the investigation that measures must be taken to ensure that refugee status does not become a factor for discrimination, and that economic support benefits the entire population settled in the

border region, regardless of nationality. According to the field investigation, refugees in the city of Nueva Loja (northern border region) receive humanitarian aid but do not live like other citizens, since they suffer from the stigma of having fled guerrilla or paramilitary activities in Colombian territory.

359. The investigation also noted a certain distrust among Afro-Ecuadorians towards the Colombian refugee population, which demands the same services as the local population. The Afro-Ecuadorian population has difficulty finding new occupations and has to compete for jobs, particularly with Colombians, some of whom settle in the camps of palm-growing companies or on the outskirts of large towns such as San Lorenzo, Borbón and Limones.

360. Lastly, even though the subject of labour rights guaranteed by Ecuadorian legislation for both nationals and foreigners has already been mentioned, it is believed that in the northern border region, particularly in Carchi province, the rights of Colombian temporary workers are not being respected by owners of haciendas producing potatoes and milk. It should be clarified, however, that there are no precise data on this subject.

361. With regard to Ecuador's border with Peru, the Ecuador-Peru Border Agreement on Border Integration, Development and Good-neighbourliness has been signed. The Agreement also set up the Binational Committee for the Promotion and Protection of the Rights of Persons in the Border Region. The regulations of the Binational Committee entered into force on 8 March 2003. The following points were agreed at the Committee's first meeting on 27 June 2006.

362. To distribute information about rights and obligations under international and bilateral human rights instruments, in order to create the notion of responsible migration among citizens.

363. To provide guidance to shapers of public opinion so that they are fully aware of the problem of border migration.

364. To inform the authorities of the other State about cases of possible human rights violations involving citizens of one State in the territory of the other.

365. To request the cooperation of international organizations, such as ILO and IOM, in order to assess the reality of border migration.

Articles 44 and 50: Protection of the unity of the families of migrant workers and reunification of migrant workers with their families; consequences of the death of a migrant worker or dissolution of marriage

366. Article 37 of the Constitution of Ecuador protects the family as the fundamental unit of society and guarantees the moral, cultural and economic conditions that favour the attainment of its ends. The Constitution also protects marriage, maternity and family property. Marriage is based on the free consent of the contracting parties and on the equality of rights, obligations and legal capacity of the spouses.

367. Article 12 of the Andean Labour Migration Instrument states that member States shall take appropriate measures to protect the families of migrant workers. To this end, they shall allow freedom of movement for entry and departure of migrant workers and their spouses or persons who have with the migrant worker a relationship that, according to applicable law in each country of immigration, produces effects equivalent to marriage, as well as non-emancipated minor children, unmarried older children with disabilities and ascendant relatives and dependants, in order to facilitate their reunification in accordance with the domestic legislation of the State of immigration.

368. As indicated earlier, Ecuador's laws on foreigners allow foreigners that hold an immigrant or non-immigrant visa to protect their children, spouses or relations by blood or by marriage who depend on them, in order to protect the family unit.

369. Many applicants for Ecuadorian citizenship by birth and naturalization come from Colombia, as a result of the displacement caused by the internal conflict that began at the end of the last century and has not abated. These applicants request category 9-VI protection visas in order to register their relatives in Ecuador in a regular situation.

370. In the same context, it should be pointed out that many Colombian women apply for Ecuadorian citizenship by naturalization by virtue of being married to Ecuadorian men, through a shortened procedure established in the Naturalization Act for such cases. Of an annual average of 50 declarations of Ecuadorian nationality by naturalization, 80 per cent are made by women of Colombian origin. [\[34\]](#)

371. The power to apply for Ecuadorian citizenship by naturalization is sustained by the institution of marriage. The Naturalization Act benefits only foreign women married to Ecuadorian men; in cases involving foreign men married to Ecuadorian women, the only concession is the reduction of the minimum length of residence in Ecuador to two years, instead of three years for all other foreigners. The declaration is carried out through a ruling by the Minister for Foreign Affairs, while the naturalization papers are granted by the executive through an ordinary procedure that lasts approximately six months. [\[35\]](#)

372. With regard to the consequences of the death of a migrant worker, the relatives of the deceased have the right, under the Labour Code and social security regulations, to appropriate compensation in cases of accidental death for work reasons or as a result of an industrial accident.

Articles 45 and 53: Enjoyment of equality of treatment by members of the families of migrant workers in relation to the indicated aspects and measures taken to guarantee integration of children of migrant workers in the local school system; right of members of families of migrant workers freely to choose a remunerated activity

373. This was covered in the replies concerning articles 30 and 49.

Articles 46, 47 and 48: Exemption from import and export duties and taxes in respect of personal effects; right to transfer earnings and savings from the State of employment to the State of origin or any other State; imposition of taxes and avoidance of double taxation

374. In Ecuador, the same tax regulations are applied to migrant workers and their families as to national workers. This means that migrant workers and their families are subject to the same tax burden and enjoy the same reductions, exemptions and deductions. [\[36\]](#)

375. Article 1 of the Internal Tax System Act establishes overall income tax on all income obtained by natural persons, undivided estates and national or foreign companies, whether the source of the income is in Ecuador or from an external source.

376. Article 8, paragraph 1, of the aforementioned Act states that income from Ecuadorian sources is defined as income received by Ecuadorians and foreigners for work, professional, commercial, industrial, agricultural, mining, public service or other activities of an economic nature carried out in Ecuador. With regard to income

from external sources, in accordance with article 49 of the Internal Tax System Act and without prejudice to the provisions of international conventions, natural persons domiciled in the country or national companies that receive income from external sources subject to income tax in the State of origin have the right to deduct the tax paid abroad from the income tax imposed in Ecuador on the same income, provided that the credit does not exceed the amount of the tax attributable to the income in Ecuador.

377. As for income tax, the regulations on value added tax are the same for Ecuadorian taxable persons as for foreigners and also for end consumers, as established in article 52 and following of the Internal Tax System Act.

378. The transfer of income was covered in the replies concerning article 32.

Articles 51 and 52: Right of migrant workers who are not permitted freely to choose their remunerated activity to seek alternative employment in case of termination of the remunerated activity for which they were admitted; conditions and restrictions for migrant workers who have the right freely to choose their remunerated activity

379. Foreign citizens who enter the country in order to engage in work activities as a dependant are obliged to obtain a work permit in accordance with article 569 of the Labour Code. The aim of this restriction is to limit the provision of work permits to workers who are qualified or who have experience in the area. However, workers can freely choose a company or job, provided that it is in keeping with their professional and technical training and their experience.

380. If migrant workers wish to change employment, they must obtain a new work permit allowing them to carry out their activities in the country. If they complete the activities for which the time limit has expired, because they resigned or for any other work-related reason, foreign citizens have 30 days in which to obtain a new migration status and category. Article 57 of the regulations governing the Aliens Act states the following: "Rules on changing migration status or category: Without prejudice to the powers of the Ecuadorian Foreign Office, the Ministry of Foreign Affairs, for non-immigrant visas, and the Office of the Director-General for Aliens, for immigrant visas, shall be able, in the country, to change, the migration status or category of foreigners admitted into Ecuador, subject to the following rules:

(a) The interested party must request the change in migration status or category using the forms produced by the Ministry of Foreign Affairs or the Office of the Director-General for Aliens, as appropriate, at least 30 days prior to the date of expiry of the authorized period of stay;

(b) The application must be accompanied by the documents required to prove that the legal requirements and regulations governing the new migration status or category have been met;

(c) If the change is authorized, previous migration documentation is cancelled. If the change was agreed by the Office of the Director-General for Aliens, the entry in the Register of Aliens will be amended immediately. If the change was approved by the Ministry of Foreign Affairs and registration is carried out by the Office of the Director-General for Aliens, in accordance with article 23 the Office of the Director-General for Aliens will amend the Register when the foreigner presents his or her passport and visa certificate, which he or she must do within 30 days of being granted the new migration status or category;

(d) Consular fees and taxes established for the new migration status and category must be paid;

(e) Non-immigrant foreigners included in categories I, II and III of article 12 of the Act who wish to engage or who are engaging in gainful activities under the same category or as immigrants are excluded from the immunities, privileges and exemptions established by the Act for such activities;

(f) If the application for a change in migration status or category is rejected, the non-immigrant may remain in the country only for the period additional to the period authorized on entry, which cannot be less than 10 days from the date of notification of the decision.

381. However, no foreigner can claim two migration statuses or categories at the same time.

Articles 49 and 56: Authorization of residence and authorization to engage in a remunerated activity; general prohibition and conditions of expulsion

382. In Ecuador, the freedom of migrant workers to choose a remunerated activity is respected. The time allowed to find another remunerated activity is one month; during this time, migrant workers are not considered to be in an irregular situation and hold a special permit, as indicated in the replies concerning article 51.

383. Conditions of expulsion were covered in the replies concerning article 22.

Part V of the Convention: Provisions applicable to particular categories of migrant workers and of their families

Provisions or measures adopted for the particular categories of migrants indicated in articles 57 to 63 of the Convention, if any

384. In general, itinerant workers, specified-employment workers, project-tied workers and self-employed workers enjoy the same rights as national workers. These rights were set out in the replies concerning article 25.

385. With regard to seasonal, transient and frontier workers, article 12, paragraph 10 (4), of the Aliens Act provides that a T1, T2 or T3 immigration stamp stating the number of days of leave may be granted to “persons domiciled abroad in towns close to the Ecuadorian border who have to travel on a daily basis to towns in border regions of Ecuador ...”

386. The regulations governing the Aliens Act provides that transient workers do not require a visa:

“Article 48. Aliens not intending to settle in Ecuador who fall within the transient worker categories defined in article 12 (X) of the Aliens Act shall not require a visa from an officer of the Ecuadorian Foreign Office in order to qualify for permission to enter. They are subject to the following rules:

- I. In no case shall transit be authorized for aliens who do not have an entry permit for the country of final destination, or a transit permit for any country or countries bordering Ecuador through which the alien in question must travel;
- II. Persons who fall under subsections 1 and 2 may not remain in the country for more than 10 consecutive days following each entry;
- III. Aliens who fall under subsection 3 shall be granted permission to remain in the country for a

maximum period of three months in any 12-month period, beginning on the date of entry, except in cases covered by reciprocal arrangements or the provisions in visa agreements and conventions. An alien who falls under this subsection shall be granted permission to reside in Ecuador for a period of three months, unless the alien requests a shorter period of stay, or has previously entered the country under the same subsection, in which case the alien will be permitted to stay in Ecuador for the remainder of the three-month period in question;

IV. Aliens admitted under the conditions of subsection 3 must comply with the relevant conditions set out in article 47, paragraphs II, III and IV, of these regulations;

V. Persons who wish to be considered under subsection 4 must complete an application form, issued by the Ministry of Foreign Affairs, which is to be submitted to the official of the Ecuadorian Foreign Office responsible for applications from residents of foreign towns close to the Ecuadorian border. A border transit pass, valid for an indefinite period for the towns specified therein, is then issued free of charge;

VI. Persons who wish to be considered under subsection 5 must meet the criteria set out in the border agreements and conventions signed by Ecuador.”

387. In the specific case of Colombian citizens in transit through the town of Tulcán, Opinions No. 003 and 004/04 of the Consultative Council on Migration Policy provide that, within the province of Carchi, such persons shall be exempt from the requirement to produce their Colombian police record and Andean Immigration Card. [\[37\]](#)

388. Decision 545 of the Andean Labour Migration Instrument, which is currently in force, refers to border workers in article 4, paragraph (d): “A border worker who wishes to pursue an occupation must have an employment contract that complies with the requirements of article 5, and must register with the labour migration offices.” Regulations are currently being drafted by the Andean Community of Nations to complete the implementation of this provision.

389. It should be noted that many Colombian citizens cross the border to engage in commercial activity on the Ecuadorian side, and are therefore classed as cross-border workers.

390. Chapter 4 of Decision 545 of the Andean Labour Migration Instrument refers to seasonal workers: “In order to qualify for permission, a seasonal worker must be in possession of a written employment contract stating the nature and conditions of the employment, as required under article 5, and must register with the labour migration offices.”

391. Should a conflict arise between the Aliens Act and Decision 545 of the Andean Labour Migration Instrument, the latter shall take precedence as an international instrument, in accordance with the Constitution of Ecuador.

392. The Andean Labour Migration Instrument states that seasonal workers shall be guaranteed the protection and facilities necessary for their work activities, particularly freedom of movement, to enable them to enter and leave the country at the start and end of their work.

393. Article 12, paragraph 9, of the Aliens Act refers to “short-term visitors for lawful purposes related to tourism, sports, health, studies, science or art, or who intend to engage in commercial activities that do not require a concurrent importation of goods. This category also includes immigrants who do not fall under one

of the other categories of temporary immigrant described in this article, subject to confirmation by the Consultative Council on Migration Policy that their presence in the country is duly justified in accordance with the relevant regulations.”

394. Moreover, when seasonal workers are employed, they shall be guaranteed adequate accommodation and the employer shall pay their relocation costs.

Part VI of the Convention: Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families

Article 65: Creation of appropriate services to deal with the international migration of workers and members of their families

395. This point was discussed under article 37 and in section I.D of this report.

Article 66: Authorized operations and bodies for the recruitment of workers in another State

396. This point was discussed under articles 25, 37 and 51.

Article 67: Measures regarding the orderly return of migrant workers and members of their families to the State of origin, their resettlement and cultural reintegration

397. There is currently no mechanism for the return of migrant workers residing in Ecuador to their countries of origin. Measures for orderly return cannot be implemented without the involvement of the migrants' countries of origin; in the case of Ecuador, the involvement of Colombia and Peru would be necessary.

398. In order to promote the orderly return of Ecuadorian emigrants, the Association for International Cooperation and Humanitarian Aid (ALISEI), Migrant House, the Ecuadorian Centre for the Promotion and Action of Women (CEPAM) and the Archdiocese of Cuenca published a guide entitled “Migration: Analysis and Proposals - policy for legal reform”, as part of the project entitled “Action to protect the human rights of migrant workers and their families, and to prevent trafficking in persons in Ecuador”, funded by the European Union. The guide is the outcome of legal research that identified the constitutional and legal norms that prevent Ecuadorian emigrants from exercising their human rights, with the ultimate aim of introducing legal reforms to bring Ecuadorian legislation into line with international standards. Although the reforms have yet to be adopted by the Congress, they provide a preliminary assessment of the situation and help to raise awareness of the issues at hand.

399. In addition, in order to encourage the voluntary return of Ecuadorian emigrants, the Government of Ecuador, through the National Financial Corporation, manages a trust called PROQUITO, through which loans are made available to microenterprises in the Quito Metropolitan District. To date, a total of \$546,810 has been spent, and the trust currently works with five organizations.

400. Over the past four years, the National Financial Corporation has provided over \$61 million in loans to the microenterprise sector, which have been distributed to 24,000 microenterprises in Ecuador, through a range of credit arrangements and through the second-tier banking scheme.

401. At present, the most relevant loan scheme for the microenterprise sector is the Microenterprise Loan Programme, CREDIMICRO, which provides funding for natural and legal persons engaged in small-scale production, trade or service provision, with annual sales or gross income up to \$100,000. Sums of up to

\$25,000 are available for a maximum period of six years, with a one-year grace period.

402. The National Financial Corporation provides technical assistance and training programmes, both for financial bodies in the sector, and directly to microenterprises, which have taken advantage of training events and technical assistance to improve their production management and standard of living.

403. Ecuadorian emigrants residing in Spain who wish to return to Ecuador can take advantage of a programme that offers funding and support to set up a small business, thus making the most of work experience acquired during their stay in Europe. The Rétaie programme is supported by the Un Sol Món Foundation of Caixa Catalunya. The aim of the programme is to support Ecuadorian citizens who have lived in Spain for less than a year.

404. The programme requires migrants who benefit from the scheme to put aside a percentage of their current income as savings, in order to pay for part of the necessary investment. The remaining capital to finance the business can be obtained through the Rétaie programme, up to a maximum of \$20,000. The interest payable is 12 per cent if the loan is obtained in Ecuador, and 6.5 per cent if it is received in Spain.

405. There are also a number of programmes that have been developed jointly with IOM. Ecuadorian emigrants wishing to return to Ecuador are offered flights home and a sum of money on arrival.

406. The aim of this assistance is to help the returning migrant to start a new life in Ecuador, and to offset the social and economic strain of return and reintegration into Ecuadorian society.

407. These programmes are funded by the United Kingdom, Spain and Mexico.

408. Details concerning each programme are given below.

The Voluntary Assisted Return and Reintegration Programme

409. Since the full programme began in September 2002, the number of applicants has risen continuously. The programme is funded by the British Home Office, which decides whether an applicant meets the criteria for inclusion in the programme.

410. The IOM office in London forwards the applicant's request to the Immigration and Nationality Directorate of the Home Office. Once the request has been approved by the Home Office, a travel date is set with the applicant and travel arrangements are made.

411. The IOM office in Quito is informed of the departure and travel plans in each case, and is given details of the application, so that it can continue the reintegration process.

412. The programme also provides reintegration assistance, the aim of which is to facilitate a sustainable return by helping the persons in question to find income-generating activities.

413. The activity chosen by the returning migrant has to be carefully planned through the IOM office in Quito before it goes ahead, so that there is an opportunity to check the costs, and to consider matters such as the aims of the activity, its location, and the migrant's expectations.

414. Since 2003, the IOM office in Ecuador has assisted in over 50 cases with various educational and microenterprise projects. The programme is funded by a budget for its annual activities.

The Programme for the Voluntary Return of Migrants from Spain

415. The aim of this programme is to help migrants returning from Spain to find a means of subsistence following their arrival in Ecuador and during the resettlement period.

416. Beneficiaries of this programme are contacted and selected through the IOM office in Madrid. The office in Quito then helps to focus the migrant's interest in resettlement assistance.

417. When they return to their hometowns, Ecuadorian migrants contact the IOM office in Quito. Once their identity and eligibility for assistance have been verified, they receive personalized guidance on drawing up a short business plan, as well as advice based on experience gained from other programmes.

418. The sum allocated depends on how many family members the applicant has, and is invested in a range of businesses through direct purchases from suppliers in order to ensure that the money is well spent.

419. Similarly, in order to ensure that the resettlement activity is effective, the cases are monitored over the first three to six months.

420. This programme is funded out of a fee for each returning migrant. To date, some 300 migrants have been assisted. In 2005, 15 cases were assisted during the pilot reintegration phase, and a further 15 cases are planned for 2006.

Assisted Voluntary Returns of Extraregional Migrants from Mexico

421. Mexico is regarded as both a country of transit and a country of destination for Ecuadorian migrants, most of whom leave Ecuador illegally. In addition to falling victim to traffickers and moneylenders, they often end up in Mexican courts without legal assistance or adequate protection of their human rights. This programme arose from Ecuadorian migrants' need for protection.

422. The IOM office in Mexico passes on information about cases of return so that the IOM office in Quito can provide assistance to migrants on their return to Ecuador. If the person returning is a minor, the Quito office contacts a family member to ensure that the minor is safely cared for upon arrival. This assistance is funded by the Government of the Mexico on the basis of a service charge for each returning migrant.

Voluntary Return Programme from Switzerland

423. This programme began only recently, in March 2006, when a family of two was assisted with a voluntary return from Switzerland. The Swiss Federal Office for Migration, in close cooperation with the IOM office in Bern, obtained travel documents for the returning migrants. The migrants were received in Ecuador by IOM, which is currently assisting the family by managing a fund donated by the Swiss Government. In this case, the fund is being used to pay the family's rent.

424. This is a pilot scheme, which will be extended in the future to cover other activities such as advice, interview and assessments, drawing up business proposals, vocational training, assistance in making travel arrangements and medical assistance. [\[38\]](#)

Article 68: Measures to prevent and eliminate illegal or clandestine movements and employment of migrant workers in an irregular situation

425. As explained in the first part of this report, the Criminal Code has been amended to criminalize the

facilitation of illegal emigration and trafficking in persons.^[39] It now reads:

“Chapter XII. Trafficking in persons

“Article 440-A. Any person who illegally facilitates the emigration of nationals or foreigners to other countries, without prejudice to any penalty imposed for a more serious offence, shall be liable to a prison sentence of between three and six years.^[40]

“The offence of trafficking in persons shall be punishable by a prison sentence of between six and nine years where the offence does not constitute sexual exploitation. If the victim is under 18 years of age, the prison sentence shall be between 9 and 12 years.”

426. On the basis of this article, the Department of Migration has taken the following measures to prevent and eliminate illegal or clandestine movements and employment of migrant workers in an irregular situation:

(a) An awareness-raising campaign was conducted for law enforcement officers, in order to step up migration control in every province of the country, while at the same time safeguarding the human rights of all individuals;

(b) Intelligence-gathering has focused on the detection and elimination of illegal or clandestine migration, the aim being to impose effective penalties for individuals, groups or entities that organize or direct such operations;

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

(d) Regular border checks are being conducted to identify traffickers or potential victims, since by inspecting documents, it is sometimes possible to identify victims travelling on false papers provided by traffickers, who may themselves be lurking close at hand.

427. The National Migration Police have conducted a number of operations targeting illegal or clandestine movements of migrants. In 2005, some 64 individuals involved in illegal trafficking in persons were arrested during a number of operations; their cases were referred to prosecutors and judges for consideration. The following operations were successfully conducted in 2005: “Cónsul”, “Norte”, “Lolita trekos”, “Papel quemado”, “Libertador”, “Consulado”, “Pelíkano”, “Eclipse”, “Otavalo”, “Fundación paz y bien”, “Rafael”, “Juan Abel” and “Cabezón”.

428. In a number of provinces, searches were carried out to trace witnesses and victims willing to take part in the trials of the detainees. Some of those located had already given their version of events when proceedings were initiated, but were required to testify against the defendants in court. These efforts culminated in success with the launch on 17 July 2004 of Operation MILLENIUM, which dismantled the entire Central American network of people involved in trafficking in persons and visa fraud. The trials of those involved are continuing in the third criminal court of Pichincha.^[41]

429. The Department of the Merchant Marine and Coastal Affairs conducted a number of operations and inspections that resulted in the seizure, on grounds of trafficking in migrants, of 11 ships in 2002, 19 in 2004,

13 in 2005 and 11 in 2006. [\[42\]](#)

430. By Ministerial Agreement No. 027-MFG-2004 of 2 June 2004, the Office of the Public Prosecutor created task forces on tourism, migration and trafficking in persons, to address growing levels of crime linked to the tourism industry and trafficking in migrants (*coyoterismo*). Units were originally set up in the district prosecutor's offices in Pichincha, Guayas and Galápagos. Given the scale of the problem, further units have been established in Azuay, Cañar and Manabí, and in other regions experiencing high levels of migration.

431. The prosecution is assisted in its inquiries by the judicial police. The national police also includes a specialist unit to combat trafficking in migrants, which makes a significant contribution in terms of investigating the crime. If a case involves minors, a further referral is made to the National Police Department for Children and Adolescents (DINAPEN).

432. DINAPEN staff are constantly conducting operations to prevent trafficking in persons in high-risk areas. As a result, in Quito, it has been possible to trace a number of foreign adolescents involved in child prostitution, who were rescued and placed in shelters.

433. Despite these efforts, it is assumed that, in the province of Carchi on the northern border, gang leaders commonly known as *cuadrilleros* continue to traffic and exploit migrants. [\[43\]](#)

Article 69: Measures taken to ensure that the irregular situation of migrant workers does not persist in the territory of the State party and circumstances that must be taken into account in regularization procedures

434. In recent years, in Ecuador there have been a number of regularization procedures for foreign nationals on the basis of bilateral agreements, for example with Colombia and Chile.

435. The Ministry of Labour and Human Resources has carried out a regularization exercise for foreign citizens working in the country illegally. The exercise began in April 2004 and ended in February 2005; 1,000 migrant workers were regularized as a result.

436. During the preparatory stage of this process, public sector bodies active in this area and representatives of civil society were invited to consider how the exercise could best be implemented. As a result, it was agreed that the procedures should be simplified to allow all workers, regardless of professional qualifications or vocational skills, to be granted a work permit. A public information campaign on the regularization exercise was launched in the media.

437. This exercise was welcomed by migrant workers. Regrettably, it was not possible to regularize all persons working illegally in the country, because the exercise ran for a limited period of time and was not the outcome of a multilateral agreement.

438. While this Convention is not concerned with refugees, one important development this year has been the introduction by the Ministry of Labour of employment permits, granting refugees the right to work in Ecuador.

Article 70: Measures taken to ensure that the living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of suitability, safety and health and principles of human dignity

439. This point was discussed under articles 27, 28, 43, 54 and 55.

Article 71: Repatriation of the bodies of deceased migrant workers or members of their families and compensation matters relating to death

440. Repatriation of the bodies of migrant workers resident in Ecuador is the responsibility of the consulate of the country of which the deceased was a national. The consular authorities are responsible for completing the administrative formalities and bear the cost of repatriating the body. They may receive assistance and donations from public and private institutions in Ecuador and, depending on their means, from the family of the deceased. For instance, in the case of Colombia, Colombian and Ecuadorian foundations such as the Colombia-Ecuador Foundation and the Women's Voluntary Foundation have made financial contributions. The National Funeral Company, an Ecuadorian enterprise, has donated a number of coffins for Colombian families of limited means. [\[44\]](#)

441. As regards repatriation of the bodies of Ecuadorian citizens who have died abroad, in view of the host country's obvious difficulties in such cases, the Office of the Ombudsman operates a programme for the repatriation of bodies, assists with administrative formalities, and meets part or all of the costs of repatriation after assessing the means of the deceased's family. To this end, it maintains the Office of the Director-General for Ecuadorians Living Abroad and local representatives of the Office of the Ombudsman in various countries. This original initiative makes Ecuador the only country to meet the requirement of repatriating the bodies of deceased citizens. [\[45\]](#)

442. With regard to compensation in cases of death, as already explained above, there is nothing to prevent migrant workers from joining the social security system; in fact, all workers are obliged to do so. On the death of the insured, the Ecuadorian Social Security Institute provides compensation in the form of funeral expenses, a sum by way of a death grant, and compensation if death was caused by a work accident.

Annex

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Minister of the Interior and Police, Dr. Laura Orellana, Dr. Cumandá Garzón

Minister of Social Welfare, Dr. Guadalupe Moreno

Minister of Education and Culture, Ambassador Hernán Holguin

Government Prosecutor's Department, Dr. Hernán Flores

Supreme Court of Justice, Dr. Alfredo Jaramillo

Attorney General, Dr. Doris Arias

Ombudsman, Dr. Camilo Restrepo

National Department of Social Rehabilitation, Dr. Mónica Luna

Commission on Human Rights of the National Congress, Dr. Iván Sánchez

Office of the Under-Secretary for Migration Affairs, Ambassador Arturo Ontaneda, Dr. Ruth Vásconez and Ms. Gabriela Troya

Department of Human Rights, Ministry of Foreign Affairs, Dr. Augusto Saá, Dr. Lorena Sánchez, Dr. Paola Orellana

Department of Migration, General Edmundo Ruiz, Lieutenant Daniel Torres

National Institute for Children and the Family, Dr. Santiago Salvador

National Statistics and Census Institute, Ms. Miriam Rodríguez

Office of the Under-Secretary for Culture, Dr. Washington Granja

Civil society organizations

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Servicio Jesuita a Migrantes, Luis Avila

Jesuit Refugee Service, Mr. Luis Tupac Yupanqui

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CISA, Dr. Miriam Sánchez

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

- [1] Aguinaga and Criollo, 2000, p. 48.
- [2] Data from October 2006. *Source*: Ecuadorian Refugee Office, Department of Human Rights, Social and Environmental Affairs, Ministry of Foreign Affairs of Ecuador and the Office of the United Nations High Commissioner for Refugees (UNHCR).
- [3] This figure may no longer be accurate, since the minimum wage in Colombia may have changed over the past two years.
- [4] According to the United States Department of Labor, <http://www.dol.gov/>.
- [5] www.ugt.es/DatoBasico/smi2005b and www.asesores.com/laboral/smi.htm.
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- [9] Article 38, Codification of the Migration Act, *Official Gazette* No. 563, 12 April 2005.
- [10] Opinions No. 003/04 and 004/04 of the Consultative Council on Migration Policy, 5 May 2004.
- [11] Lima Declaration, 16 May 2006, adopted by 24 States from Latin America, Asia and Africa, in the presence of eight international organizations: the International Organization for Migration (IOM), the United Nations Population Fund (UNFPA), the International Labour Organization (ILO), The United Nations Development Programme (UNDP), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Economic Commission for Latin America and the Caribbean (ECLAC), the Ibero-American Secretariat and the Andean Community of Nations.
- [12] The public institutions involved in this bill were: the Ministry of the Interior and Police; Office of the Director-General for Aliens; Ministry of Labour; Ministry of Foreign Affairs; the Congress; Office of the Director-General for Migration Affairs; the Ombudsman. Various civil society organizations working in the field of migration and refugees were involved, including: Servicio Jesuita a Migrantes y Refugiados; Latin American Association for Human Rights (ALDHU); the Segundo Montes Mozo centre; the Communication, Migration and Development Plan; Regional Foundation for Advisory Services in Human Rights (INREDH) [E/CN.4/2002/94/Add.1-E.doc].
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[18] Letter No. 02891 of 2 May 2006 from the Office of the Attorney General, in response to observations made concerning the report of the Working Group on Arbitrary Detention on its mission to Ecuador.

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[20] Article 18 of the Naturalization Act.

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