



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés



Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedure Reports

- Universal Periodic Review:

ECUADOR

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations relating to issues of interest and persons of concern to UNHCR with regards to Ecuador.

1. Treaty Body Reports

CMW/C/ECU/CO/2

**COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES, 13th Session
15 December 2010**

33. The Committee notes the efforts to regularize the Peruvian population in the State party. It is concerned, however, that the current procedures to regulate the migrant population in the State party are difficult to access, whether because of cost or distance, or because they are aimed at migrant workers involved in entrepreneurial activities. It is also concerned that because there is no comprehensive regularization mechanism, the authorities are resorting to the programme for expanded registration for refugees, which demonstrates a lack of understanding of the application of the safeguards established for the treatment and international protection of those who need them. The Committee also regrets the cases of expulsion of refugees and persons in need of international protection.

34. The Committee encourages the State party to redouble its efforts to establish and implement a comprehensive migration regularization policy that is accessible to all migrant workers and members of their families in an irregular situation and satisfies the principle of non-discrimination. It also recommends that the State party should carry out a programme of ongoing training for border and immigration officials on the application of the safeguards established for the treatment and international protection of those who need them, including the procedures to be followed to distinguish between the specific characteristics of the Convention and the identification of refugee status. The Committee urges the State party to expand its cooperation with international bodies such as the Office of the United Nations High Commissioner for Refugees (UNHCR).

CAT/C/ECU/4-6
COMMITTEE AGAINST TORTURE, 45th Session
19 November 2011

Non-refoulement and access to a fair and expeditious asylum procedure

13. The Committee welcomes the efforts made by the State party to respond adequately to the considerable number of persons in need of international protection present within the country (see paragraph 8 above). It appreciates in particular the launch of initiatives such as the Extended Register, which gave rapid access to procedures undertaken for the determination of refugee status for tens of thousands of Colombians in the most remote border areas. The Committee notes with concern, however, the content of Executive Decree No. 1471 of 3 December 2008, establishing as a requirement for the entry of Colombian citizens to Ecuadorian territory the presentation of a certificate of good conduct or “criminal record”, issued by the Department of National Security (DAS), the intelligence agency which comes under the authority of the executive branch of the Colombian Government. The discriminatory nature of this requirement has been pointed out by the Office of the Ombudsman, as well as by several international organizations, and was partially amended by Executive Decree No. 1522 of 7 January 2009, which excluded from the requirement minors, refugees legally recognized by Ecuador, air crews, governmental or local authorities, diplomats and members of international organizations. The Committee considers that obliging asylum-seekers to meet this requirement would force many persons in need of international protection to place their security at risk (art. 3).

Considering the considerable increase in the number of asylum-seekers in Ecuador in recent years, the Committee recommends that the State party:

(a) Pursue its efforts in conjunction with the Office of the United Nations High Commissioner for Refugees (UNHCR) to identify and protect refugees and asylum-seekers;

(b) Examine the conformity of the current legislation on asylum and immigration with the norms and principles of international human rights law, in particular the principle of non-discrimination. The State party should consider withdrawing the requirement for the submission of “criminal records” with asylum applications, which in the opinion of the Committee violates the principles of non-refoulement and confidentiality with respect to the rights of refugees.

Abuse and refoulement of asylum-seekers and refugees

14. The Committee notes with great concern the deterioration in the situation on the northern border with Colombia stemming from the domestic conflict in that neighbouring country and the presence of groups involved in organized crime, as a result of which the State party has stepped up its military presence in the area. While it appreciates the serious difficulties the State party has to deal with in order to preserve public order in provinces on the border, the Committee is deeply concerned about the reports received of continual abuses and acts of violence against the civilian population, and in particular asylum-seekers and refugees of Colombian nationality, committed by illegal armed

groups and members of the Ecuadorian and Colombian security forces (arts. 1–3, 10 and 16).

The Committee recommends that the State party:

(a) Adopt the necessary measures to guarantee the physical integrity of the civilian population in the provinces on the border with Colombia, including the refugees and asylum-seekers under its jurisdiction;

(b) Ensure that investigations are carried out into the murders and abuses committed in this region and that the perpetrators of such acts are brought before the courts;

(c) Continue mandatory in-service training programmes on human rights, asylum and migration for members of the State party's armed and security forces, and give priority to those police and military personnel serving or due to serve in border areas;

(d) Conduct a periodic review of the contents of the Guide to Human Rights and Human Mobility for members of the State party's armed and security forces.

15. The Committee notes with deep concern the wealth of documentation received about acts of abuse and sexual assaults on female refugees and asylum-seekers, allegedly committed by members of the State security forces and the Ecuadorian armed forces. The Committee has received information on women and girls, most of whom are of Colombian nationality, who are sexually assaulted or compelled to have sexual relations under threat of expulsion. The Committee draws the attention of the State party to recent cases in which Colombian asylum-seekers were returned in June 2010 and the summary expulsion of another in October 2010 before a decision had been handed down on his appeal (arts. 1–4 and 16).

The State party should:

(a) Ensure that thorough investigations are carried out into abuses committed against refugees and asylum-seekers, and in particular women and girls;

(b) Ensure that such acts do not go unpunished and that the appropriate criminal, civil and administrative liabilities are determined;

(c) Take the measures necessary to ensure that persons under its jurisdiction are fairly treated at all stages of the asylum procedure, and in particular that they receive an effective, impartial and independent review of the decision to expel, return or deport them;

(d) Ensure compliance with and proper application by the police commissioner (the provincial police authority) and provincial migration police chiefs of the protocol applicable to deportation procedures and, failing this, hand down the appropriate penalties;

(e) Take the legislative or other measures necessary to facilitate the integration of refugees and asylum-seekers;

(f) Strengthen campaigns to raise awareness of the conflict in Colombia and the situation of persons who come to Ecuador in search of refuge, as well as awareness-raising measures that could help eliminate discriminatory or xenophobic attitudes.

**CRC/C/OPSC/ECU/CO/1
COMMITTEE ON THE RIGHTS OF A CHILD, 53rd Session
29 January 2010**

Birth registration

43. While taking note of the efforts made by the State party to promote the birth registration of children, such as the National Plan for Birth Registration and mobile registration units, the Committee is concerned that many children are still not registered and lack birth certificates. It is particularly concerned that children born in the State party from parents who are immigrants or asylum seekers are denied the right to birth registration.

44. In the light of article 7 of the Convention, the Committee recommends that the State party ensure birth registration for all children, including those that are or belong to migrant or asylum seeking families, and that it is free of charge.

Asylum-seeking and refugee children

66. While welcoming the new Constitutional recognition of the right to asylum and the rights of refugees, in line with international human rights instruments, the Committee is concerned at the situation of asylum-seeking and refugee children in the State party, inter alia, their inadequate access to education, despite legislation explicitly guaranteeing the access of refugee children to the national education system. It is also concerned that children born in the State party from asylum-seeking parents are not regularly being registered at birth, therefore deprived from exercising their rights as children.

67. The Committee recommends that the State party adopt legislative or other measures to protect asylum-seeking and refugee children, in particular those who are unaccompanied or separated. In this respect it should take into account the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin (CRC/GC/2005/6). It further recommends ensuring that asylum-seeking and refugee children have an adequate standard of living, including water and food, as well as access to health care services and schools without discrimination.

**CRC/C/OPSC/ECU/CO/1
OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE
CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD
PRONOGRAPHY**

Data

5. The Committee regrets the lack of a systematic mechanism of data collection, analysis and monitoring of all areas covered by the Protocol, and the lack of research on the specific areas covered by the Protocol, especially of child sex tourism.

6. The Committee recommends that the State party develop and implement a comprehensive and systematic mechanism of data collection, analysis, monitoring and impact assessment of all the areas covered by the Protocol. The data should be disaggregated, inter alia, by sex, age, national and ethnic origin, geographical location, socio-economic status, with particular attention to the most vulnerable groups of children. Data should also be collected on the number of prosecutions and convictions, disaggregated by the nature of the offence. The Committee recommends the State party to seek technical support from inter alia UNICEF in relation to the recommendation above.

CRC/C/OPAC/ECU/CO/1

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

Data

7. The Committee regrets that information is lacking on the number of Ecuadorian children and asylum-seeking or immigrant children who have been recruited or used in hostilities by non State armed groups abroad.

8. The Committee recommends that, in order to identify root causes and undertake preventive measures, the State party establish a central data collection system for the identification and registration of all children present within its jurisdiction who may have been recruited or used in hostilities by non State armed groups abroad. Furthermore, the Committee recommends that the State party ensure that data is available regarding children, including refugee and asylum-seeking children, who may have been victims of such practices.

Prevention of recruitment by non State forces

9. The Committee welcomes the campaigns conducted by civil society on the needs of child refugees to be protected. It is however concerned at reports of non State actors crossing the border into Ecuador and forcibly recruiting children, including refugee children, in the northern border territories of the State party. It is further concerned about the insufficient measures taken by the State party to prevent this recruitment, including awareness-raising campaigns and inspections.

10. The Committee recommends that the State party take all possible measures to prevent the recruitment of children by armed groups in the territory of the State party, especially refugee children living in areas close to the border and who are particularly vulnerable, undertake research on incidences of recruitment of children by non State forces, allocate resources for their identification, provide for their access to education and ensure that investigations are carried out into alleged cases of forced recruitment of children.

Assistance for physical and psychological recovery of child victims

17. The Committee regrets the insufficient measures taken to identify children, including refugee and asylum-seeking children, who may have been recruited or used in hostilities abroad, as well as inadequate measures taken for their physical and psychological recovery and social reintegration.

18. The Committee encourages the State party to take all measures to identify children who may have been recruited or used in hostilities, and take the necessary measures for their physical and psychological recovery and social reintegration. Such measures should include careful assessment of the situation of these children, reinforcement of the legal advisory services available for them and the provision of immediate, culturally responsive, child sensitive and multidisciplinary assistance.

CCPR/C/ECU/CO/5 HUMAN RIGHTS COMMITTEE, 97th Session 4 November 2009

18. While noting that article 11.2 of the Constitution lays down the principle of nondiscrimination on the grounds of a person's criminal record and that the draft amendment to Decree No. 3301 on refugees expressly prohibits the requesting of a criminal record certificate and that the Refugees Department responsible for dealing with requests for refugee status, should not ask for criminal records when handling refugee applications, the Committee regrets that, according to some sources, the practice of requesting a criminal record certificate as an entrance requirement is applied exclusively to Colombian immigrants (arts. 2 and 26).

The State party should take the necessary steps to ensure that the constitutional principle of non-discrimination on the grounds of a person's criminal record is reflected in practice. In the light of paragraph 5 of the Committee's general comment No. 15 on the position of aliens under the Covenant, the Committee reminds the State party that, while the Covenant does not recognize the right of aliens to enter or reside in the territory of a State party, an alien may, in certain circumstances, enjoy the protection of the Covenant, even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.

CEDAW/C/ECU/CO/7 COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, 42nd Session 7 November 2008

Trafficking and sexual exploitation

22. While noting the State party's recent initiatives to address the problem of trafficking in, and the sexual exploitation of, women and girls, including the development of a specific plan of action and efforts to ensure registration of undocumented women, the

Committee remains concerned about the persistence of trafficking from and into the State party. The Committee is particularly concerned about the situation of migrant, asylum-seeking and refugee women who, falling victim to discrimination, are pushed into the informal economy, including sex work, and become vulnerable to sexual exploitation. The Committee is equally concerned at reports according to which indigenous women and women of African descent may be particularly vulnerable to trafficking and sexual exploitation.

23. The Committee calls upon the State party to dedicate adequate resources to the implementation of the national plan against trafficking and sexual exploitation and to establish a mechanism to monitor its implementation and assess its effectiveness. The Committee encourages the State party to tackle the root causes of trafficking, including poverty, discrimination and social exclusion, that make certain groups of women particularly vulnerable. The Committee further encourages the State party to strengthen the protection against discrimination and violence provided to women and girls who wish to leave prostitution as well as to victims of trafficking, develop awareness-raising programmes, conduct research on the root causes of trafficking, provide women with alternative means of livelihood as well as provide adequate training to lawyers, criminal justice workers, health-care providers and law enforcement officials in all matters concerning sexual exploitation and trafficking. The Committee invites the State party to provide in the next periodic report statistical data regarding the level of incidence of the crime, the number of criminal proceedings initiated and the sanctions imposed.

Vulnerable groups of women

26. The Committee is concerned about the situation of migrant, refugee and asylum-seeking women, especially undocumented ones, as they are exposed to abusive work and living conditions and gender-based violence and have limited access to health care. The Committee is also concerned that many unregistered and undocumented refugee women remain vulnerable to refoulement to their countries of origin and to being denied the international protection to which they are entitled.

27. The Committee recommends that the State party consistently ensure the inclusion and protection of asylum-seeking, migrant and refugee women in national legislation, public policies and response programmes that address issues related to women's rights, in particular sexual and gender-based violence. The Committee further urges the State party to take concrete measures to eliminate all forms of violence and discrimination against migrant, asylum-seeking, displaced and refugee women, including in the employment sector, by inter alia promoting their integration into the formal employment sector. The Committee encourages the State party to facilitate the access of refugee, asylum-seeking, migrant and displaced women to health and other social support services. The Committee welcomes the State party's current campaign to register and document all persons along the northern border and encourages the State party to strengthen and accelerate the process of registration as well as the refugee status determination procedure.

Health

40. The Committee is concerned at the increasing number of women contracting HIV/AIDS and at the lack of information on the incidence of HIV/AIDS among indigenous women and women of African descent. The Committee is also concerned at the low percentage of women screened for early detection of uterine, cervical or breast cancer.

41. The Committee recommends that the State party assess the incidence of HIV/AIDS in indigenous women and women of African descent, as well as migrants and refugee women. It further urges the State party to strengthen the preventive approach to HIV/AIDS and to uterine, cervical and breast cancer. The Committee further invites the State party to include in its next report further information, especially trends over time and addressing the life cycle of women, on women's general and reproductive health, including rates and causes of morbidity and mortality of women in comparison with men; contraceptive prevalence rates; spacing of children; diseases affecting women and girls, in particular various forms of cancer; and the efforts of the State to improve women's access to health-care services, including family planning and services directed towards cancer prevention and treatment. The Committee recommends that the State party strengthen the role of local governments and promote an intercultural perspective in the provision of health-care services.

2. Reports of Special Procedures mandate holders

A/HRC/17/28/Add.2

HUMAN RIGHTS COUNCIL, 17th Session

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston

9 May 2011

Recommendations

99. To address allegations of abuses by the armed forces operating along the northern border of Ecuador, soldiers should be given more extensive training, including:

- (a) Training in how to work constructively with the civilian population and civil society;**
- (b) How to apply and distinguish between human rights and international humanitarian law standards;**
- (c) How to deal humanely with displaced persons and refugees;**
- (d) Improved training in countering illegal armed groups and trafficking.**

A/HRC/15/20/Add.3

HUMAN RIGHTS COUNCIL, 15th Session

Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian

5 July 2010

Conclusions and recommendations

87. Despite the progress made, the Special Rapporteur holds the view that contemporary forms of slavery persist in Ecuador and are directly related to pervasive instances of discrimination, social exclusion and poverty. They affect sectors of the population that have faced historical wrongdoings, such as Afro-descendants and indigenous peoples, as well as those whose conditions make them the easy prey of exploitation, such as children of impoverished families, asylum-seekers, refugees and irregular and smuggled migrants and women. These people are put into conditions that make them extremely vulnerable to slavery and slavery-like practices and are generally unaware of circumstances at work that amount to forced labour and/or bonded labour and about the rights they are entitled to as workers. They are also frequently uninformed or misinformed about the health risks of their job, including in some instances, about potential irreparable damages to their health and that of their future generations that can be caused by the use of dangerous chemicals. In some instances, they might also be lured into lending their children for small amounts of money, exposing them to slavery-like situations.

Measures to prevent slavery-like situations among asylum-seekers, refugees and migrants

94. The Special Rapporteur encourages the Government to strengthen measures to prevent slavery-like situations among asylum-seekers, refugees and migrants. Among those measures, the Government should increase efforts to implement the Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America, in particular to:

- Continue strengthening the capacity of national refugee commissions to guarantee respect for due process standards and ensuring asylum-seekers' access to refugee status determination procedures, establishing effective remedies, taking decisions on claims within a reasonable timeframe and establishing procedures for appealing a decision to an independent body;**
- Strengthen and enhance coverage of programmes for self-sufficiency and local integration of refugees, including – but not limited to – fostering the generation of sources of employment, in particular, the establishment of microcredit systems; and simplifying procedures for authentication and recognition of certificates and diplomas issued abroad;**
- Promote the development of border areas through the consolidation of the presence of State institutions along with specific investments and projects sponsored by the international community, and to address basic infrastructure and community services needs, in particular in the areas of health and education, as well as to facilitate employment generation and productive projects, as necessary. All these endeavours should be gender- and age sensitive. The Government should also formulate and implement public awareness programmes targeting local populations to prevent negative feelings and all forms of discrimination.**

95. In connection with the protection of migrant workers and their families, regardless of immigration status, from labour exploitation and slavery-like

situations, the Special Rapporteur recommends that the Government establishes effective and accessible channels, which allow all – including irregular – migrant workers to lodge complaints on violations of their rights without fear of retaliation.

100. In connection with information received about outbreaks of xenophobia and related intolerance against persons of Colombian origin, particularly near the northern border, which fuel anti-migrant sentiments and create an environment conducive to the exploitation of those persons who are often the victims of slave-like circumstances, the Special Rapporteur strongly recommends that the Government:

Take all necessary steps to uphold its obligation to respect the principle of nondiscrimination and prevent, combat and eliminate all forms of discrimination and xenophobia, guaranteeing the exercise of the rights of all persons under the jurisdiction of the State, particularly without any distinction on the grounds of national origin, economic status, immigration or refugee status or status of others in need of international protection.

A/HRC/7/11/Add.3

HUMAN RIGHTS COUNCIL, 7th Session

Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

4 March 2007

III. NORTHERN ZONE AND PLAN ECUADOR

21. In order to assess the degree to which the right to the highest attainable standard of health has been taken into account, the aerial spraying of glyphosate along the northern border has to be seen in the context of the conditions of the people - refugees, indigenous peoples, Afro-Ecuadorians, internally displaced persons and other disadvantaged groups - living in the northern zone.

22. Plan Ecuador, launched in 2007, is an integrated development plan for the northern provinces of the country in response to the historic neglect of the area and to the problems generated by the Colombian conflict, such as the movement of refugees from Colombia into the northern zone. Projected until 2018, and informed by the United Nations inter-agency report, the plan includes activities regarding institution-building and cooperation, improvement of basic infrastructure, sustainable management of natural resources and so on. It is financed through budget reallocations and international cooperation. The Special Rapporteur urges the Government to reinforce the integration of human rights into Plan Ecuador. This multisectoral plan, with its emphasis on enhanced coordination, represents a huge stride in the right direction and the Special Rapporteur highly commends the Government for recognizing the gravity of the situation and for adopting Plan Ecuador.

Human Rights Liaison Unit

Division of International Protection

UNHCR

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