



**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

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**WRITTEN REPLIES BY THE GOVERNMENT OF COLOMBIA TO THE LIST  
OF ISSUES (CMW/C/COL/Q/1) TO BE TAKEN UP IN CONNECTION WITH  
THE CONSIDERATION OF THE INITIAL REPORT OF COLOMBIA  
(CMW/C/COL/1)\***

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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.

## **I. GENERAL INFORMATION**

**Paragraph 1. Please describe the role, if any, of non-governmental organizations in the implementation of the Convention and in the preparation of the State party's report.**

1. Civil society did not participate directly in the preparation of the report.

**Paragraph 2. Please provide further information on measures taken for the dissemination and promotion of the Convention. Please also indicate whether specific training programmes on the Convention are implemented for relevant public officials, such as border police officers and social workers.**

2. While the Convention has been sent to the various Colombian institutions which, as part of their functions and competencies, are working with its subject matter, there is no specific training programme on this material for officials.

**Paragraph 3. Please explain whether the national legislation provides for the application of the Convention to refugees and stateless persons (art. 3 (d) of the Convention).**

3. There is no specific reference to this in domestic legislation and regulations, but based on the principle of equality under article 13 of the Constitution, the Convention is applicable to all foreigners working on Colombian territory.

**Paragraph 4. Please indicate whether there are studies or data on the impact of migration on children in the State party, especially with respect to: (a) unaccompanied or separated children migrating in search of better opportunities; (b) children who may be left behind by their parents.**

4. There are no studies or data at national level, but the Risaralda regional branch of the Colombian Family Welfare Institute (ICBF) has carried out two studies on migration and its effects on children. These studies, confined to the municipal district of Dosquebradas, concern "threats to the rights of the boys and girls, one or both of whose parents are abroad, in children's homes and welfare homes" and the "psychosocial impact of the migration of one or both parents on children under 14 years of age whose parents are separated" (2007).

## **II. INFORMATION RELATING TO EACH OF THE ARTICLES OF THE CONVENTION**

### **A. General principles**

**Paragraph 5. Please further elaborate on the rationale of the State party's reservation entered upon ratification with respect to articles 15, 46 and 47 of the Convention.**

5. The Colombian Government ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families on 24 May 1995.
6. Its instrument of ratification contains a general reservation on the interpretation of articles 15, 46 and 47 of the Convention because the Constitutional Court, in reviewing the constitutionality of this instrument, stated the following: "Articles 15, 46 and 47 of the

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by Act No. 146 of 1994, are declared constitutional on the understanding that Colombia retains the right to promulgate taxation, exchange and monetary regulations establishing equality of treatment of migrant workers and members of their families with that of Colombian nationals in respect of the import and export of personal and household effects, the transfer of earnings and savings abroad, expropriation for reasons of equity and termination of ownership in the cases provided for in article 58 of the Constitution.”

7. The Court further stated that “the present Convention does not introduce innovations in Colombia. The authors of the 1991 Constitution sought to ensure that all the rights guaranteed by the Constitution were fully enjoyed by every inhabitant of the national territory, irrespective of origin or occupation”. The Court went on to say: “In general terms, these precepts (in the Convention) present no problem, since the (National) Constitution accords them to all persons, irrespective of their origin or status. Sometimes the Constitution is even more generous than the Convention itself in terms of the recognition and protection of rights; in such cases, the constitutional standards clearly cover foreign workers just like other inhabitants of the national territory.”

8. When looking at the implications of article 15 of the Convention, on which a reservation was made, the Constitutional Court ruled that “the prohibition against the arbitrary expropriation of the assets of migrant workers does not prevent Colombia from carrying out expropriation for reasons of equity in accordance with the provisions of the final paragraph of article 58 of its Constitution. If it did, that would constitute unjustified discrimination in favour of foreign workers, to the detriment of the principle of equality”.

9. Regarding article 46 of the Constitution, the Constitutional Court considered that “there are two decrees in force on this matter: Decree No. 2057 of 1987 and Decree No. 1742 of 1990. They provide that the personal effects of travellers, irrespective of their origin or interest in visiting Colombia, as well as the tools required for the exercise of their profession, trade or occupation, shall be exempt from taxes upon entry into the country. However, household items ... are liable to 15 per cent ad valorem duty; this provision, requiring payment of a smaller sum than it would cost to import any of the goods that normally constitute a household, is more onerous than what is envisaged in the Convention itself. In order to avoid problems of practical application of the Treaty (Convention) in relation to the regulatory framework in force, a reservation should be made under which Colombia might treat migrant workers and other travellers and residents in its territory equally in tax and customs matters”.

10. On article 47, the Court stated: “With regard to the right of migrant workers to transfer their earnings and savings abroad, the legislation and regulations in force do not prohibit this, but neither do they establish preferential treatment. Consequently, in order to avoid problems of application, a reservation should be made, as for the previous article, whereby migrant workers may be accorded the same treatment in these matters as other residents of the national territory.”

**Paragraph 6. Please explain how undocumented migrant workers and members of their families can in practice exercise their right to an effective remedy in accordance with article 83 of the Convention and specify which judicial, administrative, legislative or other authorities are competent to receive complaints of alleged violations of migrant workers' rights.**

11. Article 90 of the Constitution deals with the right to effective reparation for breaches of the rights or freedoms enshrined in the Convention, even when the breach is committed by persons performing their official functions. According to this provision: "The State shall answer materially for any type of damage attributable to an illegal action or caused by deeds of commission or omission by the public authorities."

### **B. Part III of the Convention**

**Paragraph 7. With reference to paragraph 102 of the State party's report, please clarify:**

**(a) What is the behaviour which the bill currently before Congress aims to criminalize;**

12. The bill was intended to raise the penalties, not to create new offences.

**(b) What is the current status of this bill;**

13. Article 54 of Act No. 1142, which was adopted on 28 June 2007, states that article 291 of Act No. 599 of 2000 (Criminal Code) will henceforth read: "*Article 291: Use of forged documents.* Anyone who, without resorting to forgery, uses a forged official document that may be used as proof shall incur a prison sentence of 4 to 12 years."

**(c) Whether it is an offence to enter Colombia in an undocumented or irregular situation and, if so, what is the nature of the offence and the sanctions imposed.**

14. In the first place, it should be explained that undocumented entry into Colombia is not a criminal offence; rather, it is subject to administrative penalty. Under Colombian legislation, an attempt to enter the country without the necessary documentation is a migration infraction covered by Decree No. 4000 of 2004 and constitutes grounds for non-admission or refusal of entry; this conduct thus does not constitute an offence.

**Paragraph 8. Please indicate:**

**(a) The number of migrants currently held in administrative or judicial detention for violations of provisions relating to migration, as well as the length of their detention;**

15. Colombia has no migrant centre; hence at present it has no foreigners in detention. The breach or infraction of the provisions on migration is not an offence in Colombia; nevertheless, the administrative measures set out in Decree No. 4000 are carried out within the maximum period of 36 hours established by Colombian legislation.

**(b) Whether the term of 36 hours indicated in article 109 of Decree No. 4000 of 30 November 2004, is the maximum length of time for the detention of migrants in the facilities of the Department of National Security (DAS), while awaiting expulsion;**

16. Yes, the period of 36 hours (article 109 of Decree No. 4000 of 2004) is the maximum period of time for which foreigners may be detained in the facilities of the Department of National Security while awaiting expulsion.

**(c) The steps taken to ensure that migrant workers and members of their families detained for violations of provisions relating to migration are held separately from convicted persons or persons detained pending trial.**

17. The breach or infraction of the provisions relating to migration is not a criminal offence.

**Paragraph 9. With respect to article 64 of the State party's report, please clarify who are the public officials authorized by law to retain or confiscate migrants' documents.**

18. The Department of National Security (DAS), the country's migration authority, does not retain or confiscate migrants' documents. Nevertheless, when foreigners are involved in unlawful activities that are detected during border controls, a seizure warrant is duly issued for the documentation and/or material elements of proof so that they may be handed over to the competent judicial authority.

**Paragraph 10. Please provide information on the remedies available to migrant workers and members of their families to appeal an expulsion order. Please also indicate whether collective expulsion is prohibited in the State party, and provide information on the number of migrant workers and members of their families who have been expelled since 1 July 2003, disaggregated by gender, age and nationality.**

19. An appeal may be lodged through government channels (application for reconsideration or appeal) against an administrative act ordering deportation or expulsion, with suspensive effect. However, when the expulsion is carried out on the grounds cited in article 105 of Decree No. 4000 of 2004 (activities that jeopardize national security, public order, public health, public peace or public security), no appeals may be lodged through government channels. When expulsion is ordered by a competent judicial authority as an accessory penalty by means of an enforceable sentence, no appeal may be lodged. Collective deportation or expulsion is not prohibited in Colombia, but this is not a measure applied by the migratory authority.

20. DAS only has general statistics on the number of foreigners expelled from Colombia, and these do not show the cases in which workers were involved.

**Paragraph 11. Please indicate how nationals obtain a passport or any other travel document. Is the right of nationals to leave or enter the country subject to any restriction?**

21. Article 24 of the Constitution states: "Within the limits established by law, all Colombian citizens are entitled to move about freely within the national territory, to enter and leave the country and to remain and reside in Colombia."

22. The identification of Colombians abroad is basically regulated by Decree No. 2250 of 11 December 1996, “which governs the issuance of ordinary, border zone and provisional passports and lays down other relevant provisions”.
23. Decree No. 2250, article 5, establishes the following requirements: “To be issued an ordinary passport, the applicant must present himself or herself in person at the designated office for signature and fingerprinting and fulfil the following:
- (a) Pay for the passport;
  - (b) Attach two recent photographs. In the departmental governorates and abroad, three identical photographs are required;
  - (c) Show the original and a photocopy of the identity card. If the applicant is under 18 years of age, they must show a copy of their birth certificate;
  - (d) Fill in the application form;
  - (e) Show the previous passport, if one was received.”
24. Children under 7 years of age must be accompanied by one of their parents.
25. Passports may be requested in 25 departmental governorates, 95 foreign consulates and 2 passport offices of the Ministry for Foreign Affairs.

**Paragraph 12. Please provide further information on the mandate and activities of the National Intersectoral Commission on Migration.**

26. Decree No. 1239 of 2003 established the National Intersectoral Commission on Migration as a body for the promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families. In this regard, supervision of international migration of workers and members of their families; the operations authorized and the bodies responsible for hiring workers; the measures relating to the orderly return of migrant workers and members of their families, and their resettlement and cultural integration; and the rights that guarantee that the living conditions of migrant workers and members of their families meet the requirements of suitability, security and health and, in general, are in keeping with the principles of human dignity, as has been extensively referred to in this report: all of these aspects are covered in the set of policies for which the Commission is responsible.
27. The National Intersectoral Commission on Migration is composed of public servants at the highest level, with a view to ensuring the appropriate settlement of migrant workers and members of their families in Colombia. The Commission is chaired by the Minister for Foreign Affairs. The Executive Secretariat is headed by the coordinator of the Visas and Immigration Group of the same ministry. The Commission also includes the Director of Consular Affairs and Colombian Communities Abroad, the Minister of the Interior and Justice, the Minister of Defence, the Minister of Social Protection, the Minister of Trade, Industry and Tourism, the Director of the Colombian Institute for Student Loans and Study Abroad (ICETEX), the Director-General of the National Planning Department (DNP), the Director of the

Department of National Security, the Director of the Colombian Institute for the Promotion of Higher Education (ICFES), or the persons delegated to fulfil this responsibility.

28. The functions of the Commission are:

- (a) To propose guidelines for determining and coordinating migration policy;
- (b) To coordinate studies relating to social, demographic, economic, scientific, cultural, security, public order and health needs that may affect national migration policy;
- (c) To carry out studies of professions that may be considered useful or beneficial to the country or which promote the strengthening of the community of researchers in Colombia;
- (d) To study and propose areas of the national territory for priority development by the authorities, which would make it possible to authorize the entry of foreigners with certain specialities;
- (e) To organize studies and make recommendations to the Ministry of Social Protection concerning the proportionality of foreign workers in the light of articles 74 and 75 of the Substantive Labour Code and other regulations in force;
- (f) To carry out comparative studies of Colombian migration policy with that of other States;
- (g) To monitor the agreements, treaties and other international commitments undertaken by Colombia relating to migration, with a view to their implementation, as well as domestic regulation on migration, with a view to making the necessary recommendations for its proper application;
- (h) To submit proposals on programmes for Colombians returning to the country;
- (i) To develop programmes that help Colombian nationals re-establish links with the country;
- (j) To inform Colombians living abroad about strategies relating to the rights to protection and social security so as to preserve the work benefits and other acquired rights to which workers might be entitled;
- (k) To study and review subjects submitted for its consideration by the Minister for Foreign Affairs or his or her representatives;
- (l) To study matters that might be submitted for its consideration by any of the members of the National Intersectoral Commission on Migration;
- (m) To carry out other functions similar to those set out in the present article, or which, by their nature, the Commission considers part of its mandate in the field of emigration or immigration.

29. The studies carried out within the National Intersectoral Commission on Migration with a view to the formulation of recommendations or suggestions take account of border integration policies.

30. Depending on its needs and the topics to be dealt with, the National Intersectoral Commission on Migration may invite to its meetings individuals and private and public legal entities that will have a voice but no voting rights during its deliberations.

**Paragraph 13. With reference to article 23 of the Convention, please indicate how consular or diplomatic authorities of the State party represent the interests of Colombian migrant workers abroad whenever the rights recognized in the Convention are impaired, and particularly in case of expulsion and deprivation of liberty.**

31. Consular assistance in Colombia is based on the Vienna Convention on Consular Relations, adopted by Act No. 17 of 1971, Act No. 76 of 1993 as amended by Act No. 991 of 2005, and Decree No. 274 of 2000.

32. With the assistance of legal advisers and social counsellors, Colombian consular offices help Colombians abroad by:

- (a) Promoting respect for human rights;
- (b) Providing assistance in cases of labour discrimination and abuse;
- (c) Furthering the observance of due process, the right to a defence and procedural guarantees in accordance with international principles and the relevant legislation;
- (d) Helping to locate disappeared Colombians;
- (e) Furthering respect by national immigration authorities for the interests of Colombians;
- (f) Defending the interests of minors, disabled persons and any Colombians who are temporarily or permanently incapacitated.

33. In carrying out their functions, consuls must give special attention and assistance to vulnerable groups or groups that have faced difficulties or disasters. Such persons must be taken care of on a priority basis by foreign service officials: they include minors, elderly persons and the sick who have been abandoned, Colombians in an irregular immigration situation, workers, the destitute, stowaways, the deceased, detainees, disappeared persons, victims of human trafficking, victims of people-smuggling and victims of other crimes.

34. In such cases, the consular official coordinates with local authorities, international organizations, foundations, humanitarian and health-care institutions, etc., all the appropriate steps required in each individual case to obtain immediate assistance, protection, recognition and restoration of the person's human rights.



35. When dealing with cases of deportation, consulates strive to ensure that unless the person is detained or about to be deported, his or her fundamental rights are not undermined and no treatment that violates his or her personal dignity and physical and moral integrity is inflicted. The consuls provide assistance to deported Colombians who have outstanding financial claims for work done abroad.

**Paragraph 14. With reference to article 25 of the Convention, please provide more information on measures taken to ensure that all migrant workers enjoy equal treatment in respect of remuneration and other conditions of work such as overtime, hours of work, weekly rest, paid holidays, safety, health and termination of the employment relationship. Please also indicate how these labour conditions are monitored.**

36. Migrant workers and members of their families enjoy the same rights as Colombian nationals. This treatment is of the utmost importance in building a social State governed by the rule of law. Accordingly, and given that the law is general, impartial and abstract in nature, Colombia, as a country that respects the principles contained in its Constitution and in the international instruments to which it is a party, protects on an equal basis all the rights and guarantees of all workers, without any discrimination, in accordance with the provisions of the International Labour Organization conventions and recommendations on the rights of migrant workers, and especially the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The relevant provisions relating to the right to work are contained in articles 25, 26 and 27 of the Constitution.

37. Articles 10 and 11 of the Substantive Labour Code establish the equality of workers and the right to work: “All workers are equal before the law, enjoy the same protection and guarantees and, consequently, any legal distinction between workers on the grounds of the intellectual or physical nature of work, its form or remuneration is abolished, and everyone has the right to work and is free to choose a profession or occupation in accordance with the provisions of the Constitution and the law.”

38. The Constitutional Court has further developed the principle of equality contained in article 13 of the Constitution: “In the effective exercise of equality in specific circumstances, the requirements arising from the diversity of conditions that affect or characterize each of the individuals concerned may not be ignored or disregarded. This shall not in any way be an impediment to their equal treatment. The enforcement of the right to equality does not necessarily exclude different treatment for individuals in the same situation, when there are reasonable grounds for doing so.”

39. Under the Ministry of Social Protection, labour inspection, monitoring and control is carried out by the Special Labour Inspection, Monitoring and Control Unit, 34 regional offices and around 300 labour inspectorates throughout the country.

40. The main aims of the system for labour inspection, monitoring and control are for it to be preventive, proactive, reliable and sensible and to achieve maximal coverage and impact.

41. The Ministry’s new inspection strategies revolve around the conclusion of management relations agreements aimed at achieving commitments to collaboration between workers and employers by activity branch and enterprise so as to enhance compliance with labour obligations

and foster ongoing improvements. To date, 19 improvement agreements have been negotiated in the departments of Bolívar, Caldas, Huila and Valle del Cauca and in the Special Office at Apartadó.

42. The Ministry also seeks better contacts with the public, increased reliance on the negotiated resolution of conflicts, better quality and suitability of the services offered, expansion of the sphere in which coverage is provided and increased availability of human resources and specialization in the work of inspectors and mediators.

**Paragraph 15. Please indicate which bodies are responsible for providing to migrant workers the information required by article 33 of the Convention, and how this information is in practice accessible for both Colombian nationals preparing for labour migration and foreign migrant workers and members of their families residing in Colombia.**

43. The authorities responsible for providing this information are the Ministry of Foreign Affairs, the Ministry of Social Protection, DAS and the Ministry of the Interior and Justice.

**Paragraph 16. Please inform the Committee about measures taken to promote and protect the rights of women migrant workers, both those who migrate abroad and those who immigrate into the State party's territory.**

44. By agreement with the International Organization for Migration (IOM), the Ministry of Social Protection has established the Migrant Information and Support Centre (CIAMI) for the purpose of providing information on work and/or services outside the country relating to international labour migration and social protection in order to promote equitable and decent migration conditions and monitor respect for human rights in countries of origin, transit and destination.

**Paragraph 17. Please indicate:**

**(a) How the right of each child of a migrant worker, including those in an undocumented or irregular situation, to have a name, to be registered at birth and to have a nationality, is effectively ensured in practice;**

45. Article 14 of the Constitution states: "Every person is entitled to recognition of his legal personality." Article 44 provides that: "The fundamental rights of the child are the right to have a name, nationality and a family and not be separated from it. The child shall also enjoy the rights enshrined in the Constitution, the legislation and the international treaties ratified by Colombia. The family, society and the State have the obligation to assist and protect children in order to guarantee their harmonious and complete development and the full exercise of their rights. Any person may request the competent authority to enforce these rights and to sanction those who violate them."

46. Act No. 12 of 1991, by which the Convention on the Rights of the Child was adopted, states in article 1 that a child shall be registered immediately upon birth and shall have from birth the right to a name, to a nationality and, in so far as possible, to know his or her parents and be cared for by them.

47. In conformity with the provisions just cited, the children of foreigners who are born in Colombia, including those who are in an undocumented or irregular situation, may have their births inscribed in the civil register.
48. As regards Colombian nationality, in order for the child of a foreigner who is born in Colombia to acquire Colombian nationality, at least one of the parents must have been domiciled in Colombia at the time of birth.
49. Accordingly, for documents certifying Colombian nationality (identity card or citizenship papers) to be issued to children of foreigners who are born in Colombia, they must present, in addition to the birth certificate, certification of the domicile in Colombia of one of the parents at the time of birth, issued by the competent official.

**(b) The measures taken to ensure the access to education and medical care of children of undocumented migrant workers.**

50. Article 4 of the Code on Childhood and Adolescence stipulates that the code applies to all children and adolescents present in the national territory, whether they are Colombian nationals or foreigners, to nationals who are abroad and to dual nationals when one of their nationalities is Colombian.
51. Article 27 on the right to health states that all children and adolescents have the right to comprehensive health care. No hospital, clinic, health-care centre or other service for the provision of health care, whether public or private, may refrain from treating a child in need of health care.
52. The right to education is covered in article 28, which states: “Children and adolescents have the right to good quality education. The State shall be required to provide this for one year at preschool level and nine at the basic educational level. Education shall be provided free of charge in State institutions in accordance with the terms set out in the Constitution.”

**C. Part IV of the Convention**

**Paragraph 18. Please inform the Committee about the legislation and practice concerning family reunification of migrant workers in accordance with article 44 of the Convention.**

53. The protection of members of the families of migrant workers, in particular with regard to family unity, family reunification, divorce or the death of a migrant worker, as provided for in articles 44 and 50 of the Convention, is also addressed in articles 5, 13 (cited above) and 42 of the Constitution. However, it is important to note that, in Colombia, there are informal associations for groups of foreigners, including Koreans, Ecuadorians, Jamaicans and Arabs. Articles 5 and 42 establish the following:

Article 5. The State recognizes, without any discrimination, the primacy of the inalienable rights of the person and supports the family as the basic institution of society.

Article 42. The family is the fundamental unit of society. It is formed through natural or legal ties, by the free decision of a man and woman to enter into marriage, or by their responsible desire to form a family. The State and society shall guarantee comprehensive protection for the family.

54. A member of a migrant worker's family who wishes to engage in remunerated activity must request a new permit or visa from the Aliens Division of the Department of National Security and must request the proportionality ratio from the Ministry of Social Protection with respect to the occupation and enterprises chosen. This is because the law grants only one permit that covers the residence and work of the person entering the country.

55. Foreigners holding a work visa may apply for dependents' visas for their spouse or partner, parents and children, provided that the latter are financially dependent on them and that they can produce proof of ties or kinship. Under Decision No. 255 of 2005, such applications must be accompanied by proof of the legal status of spouse, partner, child or parent, and of their financial dependence on the visa holder.

**Paragraph 19. With reference to paragraph 81 et seq. of the State party's report, please clarify whether migrant workers have the right to form associations and trade unions as well as to be part of their leadership.**

56. Political rights, such as the right to form associations and trade unions, are covered by article 39 of the Colombian Constitution:

Article 39. Workers and employers have the right to form trade unions or associations without intervention by the State. They shall acquire legal recognition simply by registering their constituent instrument. The internal structure and functioning of the trade unions and social and guild associations shall be subject to the legal order and democratic principles. The annulment or suspension of legal capacity may be effected only through judicial means. Trade union representatives shall be recognized as having the privileges and other guarantees necessary for the performance of their functions. Members of the public security forces shall not have the right to form or join trade unions.

**Paragraph 20. With respect to Act No. 1070 of 3 July 2006, which allows foreigners resident in Colombia to vote in municipal or district elections and referendums, please clarify whether migrant workers residing in Colombia have exercised their right to vote so far and, if so, please provide some statistics in this respect.**

57. Since the entry into force of Act No. 1070 of 2006, which governs the right of foreigners resident in Colombia to vote, the National Civil Registry has taken the necessary steps to guarantee the right to vote of this new population group, which has now joined the electoral roll.

58. For the local elections in 2007, the registrar of civil status issued Decision No. 373 of 31 January 2007, regulating the registration of foreigners resident in Colombia for the exercise of their right to vote in the elections of 28 October 2007 for mayors, municipal councillors and members of local administrative bodies.

59. The Electoral Registration Department issued Circular No. 24 of 16 February 2007, paragraph 8 of which gives instructions on the registration of identity cards of foreigners resident in Colombia, as well as on the subsequent voting procedure.

60. However, it should be pointed out that the administrative requirements applicable to the offices concerned as a result of the promulgation of Act No. 1070 of 2006 do not include any requirement to classify foreigners or check their employment status, so that the department has no way of knowing whether the people registered in a given circumscription are migrant workers or not.

61. Finally, we can inform the Committee that a nationwide total of 1,351 foreigners were entitled to vote in Colombia as a result of the first registration exercise in 2007.

**Paragraph 21. With respect to the right to vote of Colombians living abroad, please indicate how this right is facilitated and exercised in practice.**

62. Pursuant to article 1 of Decree No. 51 of 1986 and article 16 of the Electoral Code (Decree No. 2241 of 1986), the National Civil Registry has enabled Colombians living abroad to vote in the elections for the presidency and the Senate, using embassies, consulates and other locations authorized by the Government for this purpose.

63. Voting took place in 65 countries, with 190 polling boards in operation, for a potential electorate of 327,384 Colombians living abroad.

64. As for the electoral procedures in Colombia, the Electoral Management Department and the Electoral Registration Department of the National Civil Registry issue instructions on preparations for election day, including voter registration and the appointment of polling board members.

65. In terms of the elections in 2006, the Electoral Registration Department issued Circular No. 33 of 1 April 2005, giving instructions on the registration of identity cards in foreign countries for the 2006 elections.

66. The same department produced and distributed a booklet on “Elections abroad (congressional elections of 12 March 2006)”, containing procedures and instructions for polling board members and election officials abroad.

67. More recently, in application of Legislative Act No. 3 of 2005, amending article 176 of the Constitution, the department has given Colombians living abroad a greater opportunity to vote in elections to the House of Representatives, by reserving a seat in the House for a representative of Colombians living abroad, to be exclusively elected by them in a special international circumscription. For the 2006-2010 term, Mr. Manuel José Vives Henríquez was elected by Colombians living abroad to represent them in the House, with a total of 9,319 votes.

68. As a result of the effective joint efforts of the Registry and the Ministry of Foreign Affairs, Colombians living abroad now periodically go to the polls and take part in the political decisions of their country.

**Paragraph 22. Please provide information on remittances transferred by Colombian migrant workers abroad. In the light of article 47 of the Convention, please also provide detailed information on measures taken by the State party to facilitate transfers of migrant workers' earnings and savings.**

69. The volume of remittances sent to Colombia by expatriates in recent years has been a constant in Chile's balance of payments and gross domestic product (GDP). In 2003, US\$ 3,060 million was sent; in 2004, US\$ 3,170 million; in 2005, US\$ 3,314 million; in 2006, US\$ 3,890 million; and in 2007, US\$ 4,489 million. Remittances account for the second-largest contribution to GDP, having overtaken traditional Colombian commercial products such as coffee and flowers. Remittances are commonly used to cover the needs of members of migrants' families.

70. In conjunction with the private sector, Colombia offers alternatives for investing remittances, by assisting with accommodation in the foreign country so that expatriates can invest in housing in Colombia, thereby ensuring they can return in decent and stable conditions.

#### **D. Part V of the Convention**

**Paragraph 23. Please indicate the number of frontier and seasonal workers engaged in a remunerated activity in Colombia, disaggregated by gender and nationality, and provide information on the bilateral and multilateral agreements governing migration by frontier and seasonal workers to which Colombia is a party.**

71. No statistical information is available on the number, gender or nationality of frontier and seasonal workers.

#### **E. Part VI of the Convention**

**Paragraph 24. In the light of article 66 of the Convention, please indicate:**

- (a) Which services are in charge of the recruitment process of Colombian workers for employment in another State;**
- (b) The efforts undertaken to regulate recruitment activities within the State party;**
- (c) The efforts undertaken to cooperate and consult with the main destination countries of Colombian migrant workers with a view to promoting sound, equitable and humane working and living conditions for Colombian nationals in those countries.**

72. The Government firmly believes that migration is a social phenomenon that contributes to economic and social development in so far as it encourages cultural diversity and technology transfer. It is therefore seeking to enhance cooperation between countries and to join in international efforts to promote respect for human rights and to prevent illegal migration and the exploitation of migrant workers.

73. Labour migration agreements are designed to ensure that migratory flows are orderly and coordinated and that Colombian workers go to countries with which agreements have been signed, where they can enjoy the rights and labour guarantees provided for in the host country's legislation.

74. The Government has thus been taking steps to ensure that international migrant workers are regularized and enjoy adequate social protection, by means of instruments, agreements and conventions.

75. At the level of the Andean Community, the following points can be made.

76. In order to make the Andean Labour Migration Instrument (Decision No. 116 of the Cartagena Agreement) more effective and adapt it to plans for regional integration, Decision No. 545 of 2003 provides not only for freedom of movement but also for observance of the rights of migrant workers and members of their families.

77. The Government has entered into bilateral agreements on social security and pensions, to take account of the contribution period in each State. For example, Colombia has signed such agreements with Spain and Chile; these are currently before the legislature. The agreement with Uruguay on the same subject is already being implemented.

78. The Agreement between the Republic of Colombia and the Kingdom of Spain on the Regulation and Organization of Labour Migration Flows, signed in Madrid on 21 May 2001, allows nationals from both States to work in the other country as official migrants. This is an important step forward in ensuring that international migrant workers are regularized and enjoy adequate social protection.

79. The Agreement also aims to guarantee that Colombian workers in Spain enjoy legal protection that promotes the exercise of the human rights recognized in international law, to ensure that Spanish employers recognize their labour rights and to promote programmes to prevent illegal migration, which encourages the illegal exploitation of foreigners.

80. Since the Agreement was signed, various offers of work have been forthcoming from Spanish companies, leading to the hiring and re-hiring of over 8,000 Colombian workers, who have filled 96 per cent of the positions on offer. A large number of Colombian migrants have thus benefited from the Agreement.

81. It should be mentioned that the Agreement is being applied by the National Apprenticeship Service (SENA), with the cooperation of institutions such as IOM and the Ibero-American Association for Cooperation, Development and Human Rights (AICODE), which have facilitated the movement of Colombian workers.

**Paragraph 25. With respect to paragraph 15 of the annex to the State party's report, please provide updated information on the activities undertaken in the context of the programme "Colombia Nos Une" aimed at preventing irregular migration of Colombian nationals. In this respect, please provide more information on the mandate and structure of this programme.**

82. The "Colombia Nos Une" ("Colombia Unites Us") programme was set up in 2003 as part of the 2002-2006 development plan "Towards a community-based State". The goal of the programme is to strengthen ties between Colombians living abroad and their families, their regions of origin and their country at large. It also aims to discover more about the Colombian diaspora, in order to find out what its needs are and to design a public policy that meets those needs. In this way, efforts have been made to integrate and include this population group in the Colombian State.

83. The Colombia Nos Une programme acts through working groups that address the various aspects of the migration process and respond to the different needs of Colombians living abroad. The working groups have the following aims:

- (a) *Population trends*: identify and describe the Colombian population living abroad; *Social welfare*: reduce the vulnerability of Colombians abroad in the areas of labour migration, pensions and health;
- (b) *Transnational economy*: facilitate the transfer of remittances and help channel them into savings and investment;
- (c) *Political participation*: encourage and strengthen political participation from abroad and support Colombian associations;
- (d) *Transnational networks*: establish channels of communication between the Colombian diaspora and the home country;
- (e) *Consular affairs*: help the consular service to address the needs of Colombians living abroad;
- (f) *Culture*: promote a positive image of Colombia;
- (g) *Education*: promote opportunities for study and a rapprochement between education and migration;
- (h) *Project portfolio*: set up projects that Colombians living abroad might like to finance for philanthropic reasons.

84. The work of the Colombia Nos Une programme is determined by the implementation and strengthening of social networks among Colombians living abroad, on the assumption that this will contribute to their recognition and their ties with Colombia. For this reason, the chosen method for running much of the Colombia Nos Une programme is the "creation and strengthening of social capital", where social capital is understood as "the building of trust, reciprocity and cooperation and the training of support networks or associations that promote collective progress".



85. Some of the work done under the programme so far is listed below:

- (a) Inclusion of the migration variable in the 2005 national census;
- (b) Academic studies on Colombians in London, the United States and Spain;
- (c) Annual academic seminar to discuss migration with experts and representatives of countries with broad experience of migration;
- (d) Round table with the Ministry of Education, which led to the issuance of Decision No. 5547 of 2005, regulating recognition of qualifications from foreign educational institutions;
- (e) Access by 3,756 Colombians living abroad to online courses provided since 2006 in agreement with the National Apprenticeship Service;
- (f) Cooperation with the Ministry of the Environment, Housing and Regional Development, construction unions and Proexport in organizing nine housing fairs in the countries hosting the largest numbers of Colombians;
- (g) Cooperation with Proexport in setting up the Colombian trade network colombianosnegocian.com, a virtual platform that promotes and facilitates the identification and realization of business opportunities for Colombians living abroad and Colombian companies;
- (h) Agreements on access to social security with Spain, Chile and Uruguay;
- (i) Introduction of a consular registration card in the United States as an identification document for use by Colombians in their contacts with various authorities;
- (j) Support for campaigns to prevent illegal migration;
- (k) Support for the research project “New perspectives on Latin American migration to Europe: Colombians in London”;
- (l) Second education forum on migration;
- (m) Establishment of an inter-institutional group called the Country Alliance, consisting of the Colombia Nos Une programme, the National Department of Statistics (DANE), Banco de la República, the Association of Foreign-Exchange Agencies (ASOCAMBIARIA), Asociación América-España, Solidaridad y Cooperación - Colombia (America-Spain Solidarity and Cooperation Association - Colombia) (AESCO), the Alma Mater network of public universities from the coffee-growing belt, the United Nations Development Programme and IOM. Within this framework, a study was completed on the impact at the micro and macro levels of family remittances in Colombia;
- (n) First Colombian regional meeting on development and international migration;
- (o) Adaptation of the pension contribution scheme for Colombians living in the United States;

(p) Participation in the 2007 Binational Health Week, an event that addresses the health of the most vulnerable Latin American immigrants in the United States;

(q) Establishment of the International Migration Studies Centre (CEMIC);

(r) Exchange of experiences in migration matters with Mexico;

(s) Implementation of the “Community Abroad” plan, aimed at strengthening the Colombian community abroad and bringing it closer to consulates to encourage them to work together;

(t) Establishment of the Redes Colombia website, as a tool for communication among Colombians living abroad and between them and Colombia.

86. In recognition of the need to move towards a State policy that brings together the various existing measures and that focuses on recognition of Colombians living abroad as a vital part of the nation, the Ministry of Foreign Affairs set itself the foreign-policy goal of drawing up, for 2010, a comprehensive migration policy involving all governmental and non-governmental stakeholders involved in the migration process. The Colombia Nos Une programme has been entrusted with this task, as part of its mission to “design, implement and evaluate a State migration policy that attends to the needs of Colombians living abroad, offers them links to the home country and makes them the subject of public policies”.

**Paragraph 26. Please indicate:**

**(a) The number of unaccompanied or separated Colombian migrant children who have returned or been returned to Colombia on account of their irregular status;**

**(b) The measures taken to prevent migrant children who are returning to Colombia from being trapped in trafficking networks and/or from becoming victims of any form of exploitation, or from being recruited in armed groups;**

**(c) The measures taken, including bilateral or multilateral agreements, to facilitate the orderly return of Colombian migrant workers and members of their families, when they decide to return, as well as to promote adequate economic conditions for their resettlement and their durable social and cultural reintegration.**

87. No data are available on unaccompanied or separated Colombian migrant children who have returned or been returned to Colombia on account of their irregular status.

88. When a child is repatriated to Colombia, the procedure is coordinated with the authorities of the foreign country concerned and the Colombian consular authorities. The case is then handed over to the Colombian Family Welfare Institute to make the necessary arrangements for taking care of the child. In cases where the child is the victim of trafficking or some other crime, specialized investigation services and the International Criminal Police Organization (INTERPOL) become involved. From the moment a child is discovered in the foreign country until repatriation, he or she receives assistance from the authorities.

**Paragraph 27. Please provide additional information on the extent of the phenomena of smuggling of migrants and trafficking in persons in the State party's territory and on the measures taken to prevent and combat them. In particular, please indicate:**

**(a) The estimated number of persons trafficked to, from, through and within the State party since 1 July 2003, disaggregated by gender, age and nationality;**

89. As Colombia is a country of origin of victims of trafficking, most of the cases reported concern Colombian citizens; only in 2007 did investigations reveal how some Ecuadorian citizens, including two minors, were exploited for the purposes of labour in Colombia.

Year	Victims	Sex	Nationality
2003	37	37 female	Colombian
2004	48	45 female, 3 male	Colombian
2005	15	12 female, 3 male	Colombian
2006	8	8 female	Colombian
2007	7	7 female	6 Ecuadorian, 1 Colombian

90. Investigations into this offence are being conducted in 2008, but no arrests have been made or victims released so far.

**(b) The measures taken to protect Colombian migrant workers travelling abroad in search of better economic opportunities, and notably women migrant workers, from being trapped in trafficking networks and becoming victims of exploitation;**

91. Migrant workers are protected in the first place by the Colombian State at the national level. Articles 73 to 76 of the Substantive Labour Code regulate the hiring of Colombian nationals in national territory by foreign companies and companies that require Colombian nationals to move to the territory where the work is to be done. The regulations are applied by the Ministry of Social Protection: checking the provisions and clauses of the contract is part of the analysis carried out before a Colombian national can be hired. The Colombian Government, in its search for better options for its working population, is also using the "temporary and circular labour migration" model. This mechanism is noteworthy for two reasons: first, it controls labour migration and, second, as an initiative taken by companies in the country of destination, it is regulated and approved by both States (of origin and destination), so that the migrant can officially stay in the country. This gives legal certainty to both the employer and the employee, encourages them to stay within the law and reduces illegal practices. The jobs are temporary, lasting for periods of between six and nine months, with the possibility of an extension to two years. As a result, migrants return to Colombia with work and life experience that they can draw on periodically in Colombia, since they have the option of returning to work in the country offering employment, provided that companies in that country offer them work (seasonal and/or harvesting work). This is what makes the process "circular". The temporary and circular labour migration model was introduced in 2001, when Colombia and Spain signed an agreement on regularizing and organizing labour migration flows. This mechanism is aimed at vulnerable people in Colombia and has so far benefited 12,500 people, many of them (46 per cent) women, throughout the country. It also ensured that they did not fall victim to trafficking or exploitation.

92. Meanwhile, the Social Security Institute, which is part of the Ministry of Social Protection, is running a programme called “Social security for Colombians abroad”. This programme gives Colombians who have settled abroad the option of contributing to Colombia’s pension scheme, to permit a safe and orderly return to Colombia. This means that people who return spontaneously may be less vulnerable.

93. In addition, Colombia has signed the following agreements on social protection for Colombians living abroad: the Ibero-American Agreement on Social Security (Quito, 1978); the Ibero-American Agreement on Cooperation in the field of Social Security (1978); the Treaty of the Ibero-American Social Security Community (1992); the Statutes of the Ibero-American Social Security Organization (1995); and Decisions Nos. 69, 503, 545 and 583 of the Andean Community. As far as bilateral agreements are concerned, attention is drawn to the exchange of notes constituting a cooperation agreement in the field of health (1980) and the Agreement on Social Security signed with Chile, and the Agreement on Cooperation in the field of Health signed by Colombia, Ecuador and the Andean Health Body - Hipólito Unanue Convention (ORAS-CONHU) (2002).

94. Joint information campaigns are always available for Colombians before, during and after they leave for better opportunities abroad. These campaigns focus on countering false information on migration, and are run by IOM and the organization “IR REGULAR”. They promote legal migration and prevent Colombians from becoming involved with people-trafficking and smuggling networks. As part of these joint campaigns, the Government has been providing migrant workers with information on such issues as their rights and duties in their countries of destination, by means of information booklets distributed by trade unions, civil society organizations and consulates. This work is carried out together with a trade union organization, the General Labour Confederation, and with IOM and the Ministry of Social Protection.

95. Act No. 985 of 2005 establishes a national strategy to combat people-trafficking, setting out the action to be taken and goals such as: the introduction of an information system; the prevention of trafficking by means of social, economic, political and legal measures; the strengthening of the institutions that investigate, prosecute and punish the offence; victim protection and assistance; and the promotion of inter-agency and international cooperation. The strategy includes:

(a) Education for the general public and training for the national authorities. Information is provided through the media on the offence of people-trafficking and its consequences, and publicity materials provide information on it in ports, airports and inland terminals;

(b) Introduction of a free telephone line to provide information, and also to receive information that might help in investigations and any court proceedings regarding people-trafficking: the number, 01 8000 52 20 20, can be reached from abroad too;

(c) Creation of the website [www.tratadepersonas.gov.co](http://www.tratadepersonas.gov.co), so that the public also has Internet access to information alerting them to the criminal nature of people-trafficking;

(d) Establishment of the Operations Centre to Combat People-Trafficking (COAT), which coordinates government action to investigate and prosecute cases of trafficking and assist the victims;

(e) Creation of a standard form for gathering information on cases of people-trafficking that are known or reported to Colombia's diplomatic offices around the world;

(f) Coordination with international bodies such as the United Nations Office on Drugs and Crime and IOM in assisting and repatriating Colombian victims;

(g) Conclusion of agreements with national NGOs with experience in the area of people-trafficking, giving them responsibility for providing immediate physical, psychological, social and legal assistance to adult victims. In cases of people-trafficking involving minors, the Colombian Family Welfare Institute provides support;

(h) Use of INTERPOL channels to exchange information from the police and the courts on this offence and, where necessary, to apply for red, blue, yellow or green notices; also to monitor and sometimes ensure safe passage for Colombian victims who decide to return to Colombia.

**(c) The number of criminal investigations per year since 1 July 2003 and the sentences imposed for the crime of trafficking in persons;**

96. See table below:

**Act No. 906**

Offence	Action	Total
Trafficking in persons (Criminal Code, art. 188A)	Direct indictment - covers all those charged	4
	Direct indictment - does not cover all those charged (breakdown)	4
	Indictment by admission of charges	2
	Indictment by plea bargain - covers all those charged	2
	Indictment by plea bargain - does not cover all those charged (breakdown)	4
	Conviction by direct accusation (declared final)	1
	Conviction by complete admission of charges (declared final)	1
Trafficking in persons (Criminal Code, art. 188A) for the purposes of forced labour		
Trafficking in persons (Criminal Code, art. 188A) for the purposes of pornography	Direct indictment - covers all those charged	1
Overall total		19
Trafficking in persons (Criminal Code, art. 188A)	Summary judgement	3
	Specification of charges and decision to prosecute	31
	Termination of proceedings by conviction in the trial phase	1
Overall total		35

*Source:* Prosecutor's Office Judicial Information System (SIJUF) and Oral Accusatory System of Criminal Justice (SPOA) of the Prosecutor's Office, National Prosecution Service.

**(d) The procedures in place for the rapid identification of victims of trafficking, and notably children, in the context of migration control;**

97. Staff of the El Dorado airport in Bogotá are properly trained by the Colombian Family Welfare Institute to detect suspected cases of trafficking in persons. Since the adoption of the Children's and Young Persons' Act, children under the age of 18 need their parents' permission to leave the country if no parent is travelling with them. This requirement screens children leaving the country.

98. The Aliens Division carries out migration checks, and one of the methods it uses is to request the documentation required by a minor to leave the country. Its methods are regulated by Decree No. 1098 of 8 November 2006, issuing the Code on Childhood and Adolescence.

99. The guidelines for detecting child victims of trafficking tell officials to look out for youngsters aged between 15 and 17 who look like adults or who have fake, recently acquired documents showing them to be adults (e.g. extract from the birth register, identity card receipt, passport, visas, etc.). In general, the children travel alone and claim that family members are waiting for them and will look after them in the country or countries they are travelling to. If they travel with an adult, the latter tries to pass them off as their son or daughter or close relative such as a nephew or cousin.

**(e) The number of criminal investigations per year since 1 July 2003 and the sentences imposed for the crime of smuggling of migrants.**

100. Since 2004, the Aliens Division of the Department of National Security has dismantled 11 migrant-smuggling organizations.

**Act No. 906**

Offence	Action	Total
Smuggling of migrants (Criminal Code, art. 188, as amended by Act No. 747/2002, art. 1)	Direct indictment - covers all those charged	2
	Direct indictment by plea bargain - does not cover all those charged (breakdown)	8
Smuggling of migrants (Criminal Code, art. 188B, aggravated when a child under the age of 14 is concerned)	Direct indictment - covers all those charged	1
	Direct indictment by admission of charges	1
	Conviction by complete admission of charges (declared final)	1
	Summary judgement	4
Smuggling of migrants (Criminal Code, art. 188)	Specification of charges and decision to prosecute	4
	Termination of proceedings by conviction in the trial phase	4
Overall total		25

*Source:* Prosecutor's Office Judicial Information System (SIJUF) and Oral Accusatory System of Criminal Justice (SPOA) of the Prosecutor's Office, National Prosecution Service.

**Paragraph 28. With reference to paragraph 103 of the State party's report, please provide more information on the two regularization processes referred to therein and update the Committee on any further initiative aimed at regularizing the situation of irregular migrant workers in Colombia.**

101. In 2001, the Government conducted a regularization process that gave all foreigners without papers and in an irregular situation the opportunity to regularize their situation in Colombia, with the following results:

Applications received	Applications approved	Applications rejected
2 014	1 673	341

102. On 14 October 2008, the Government issued Decree No. 3970, which introduced a regularization process for foreigners in Colombia. The process is open to foreigners who entered the country before 1 April 2008 and whose stay is irregular. Foreigners wishing to benefit from the process must submit a request in writing to the Department of National Security in their place of residence or at its nearest office within 180 calendar days of publication of the decree.

**Paragraph 29. Please indicate whether the State party has made any assessment or has any information on the transit of illegal or clandestine movements of migrant workers in an irregular situation through its territory.**

103. No information is available on the transit of illegal or clandestine movements of migrant workers in an irregular situation through national territory.

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