

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COMMITTEE ON MIGRANT WORKERS 10<sup>TH</sup> SESSION COLOMBIA, INITIAL REPORT 20-21 MAY 2009

Key facts .....	1
Opening remarks by the delegation .....	1
Overview of key issues .....	2
Constitutional and legislative framework .....	3
Dissemination of the Convention.....	3
Registration, expulsion and deportation of migrants .....	4
Data on migration .....	5
Trafficking.....	6
Conclusions and next steps .....	6

### Key facts<sup>1</sup>

Ratification	Reservations	Recognises Committee's competency under Article 77 <sup>2</sup>	Other core treaties ratified	Due date of report and submission
1995	Articles 15, 46 and 47	No	ICCPR, ICESCR, CAT, CRC, CEDAW, CERD	1 May 2009

### Opening remarks by the delegation

Ms Clara Ines Vargas, Director for Multilateral Affairs at the Ministry of Foreign Relations of Colombia, led the delegation of Colombia. She was supported by a very small, relatively low-level delegation consisting of one representative of the Permanent Mission in Geneva, Mr Alvaro Enrique Ayala Melendez. She apologised for the small delegation present, but explained that Colombia's representatives were all very demanded due to a number of simultaneous major conferences going on presently in Geneva. Colombia was reviewed by the universal periodic review (UPR) in December 2008, and the Human Rights Council adopted the respective report in March 2009. For the entire UPR process, Colombia had sent very high-level delegations, with the Vice-President presenting the national report to the UPR Working Group in December 2009.<sup>3</sup> Later in 2009,

<sup>1</sup> The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at [www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx](http://www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx).

<sup>2</sup> Article 77 provides that a State Party to the Convention may at any time declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim that their individual rights as established by the Convention have been violated by that State Party.

<sup>3</sup> See ISHR's report on the review of Colombia, available at <http://www.ishr.ch/upr-monitor>.

Colombia is to be reviewed by the Committee on the elimination of racial discrimination (CERD) and the Committee against torture (CAT). This is indeed a relatively high level of attention within the UN human rights system.

The Director for Consular Affairs at the Ministry of Foreign Affairs of Colombia, Mr Fernando Alzate, arrived at the end of the session and apologised again for the small delegation present. Ms Vargas responded to the vast majority of questions. In her opening remarks, Ms Vargas expressed her concerns that only 41 States have ratified the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (the Convention), and drew attention that many economically advanced countries have not yet signed this Convention. Ms Vargas gave statistics on migrant workers in Colombia and outlined the domestic legal framework for their protection. She gave basic information regarding Colombia's institutional efforts, for instance by presenting a brief overview of the *2004 Migrant Statute* and the *Intersectoral Commission on Migration*. She added that bilateral agreements on entry without visa to Colombia were established with 87 countries. Ms Vargas drew attention to the foreign affairs project to design an *Integrated Migration policy* and briefly described the implementation of this policy. Its the main goal is 'proposing guidelines to determine and coordinate migration policy while integrating social, cultural and economic issues related to migrants abroad'. Ms Vargas underlined that this programme considers Colombians abroad as a 'vital component of the nation'.

She broadly described the general norms applicable to foreigners in Colombia and affirmed that foreigners have the same rights and guarantees as nationals. However, she pointed out some exceptions with regard to political rights, which are established by Colombian law. For instance, foreigners can vote during municipal elections and municipal consultations, but not on the national level. Ms Vargas's presentation was detailed, and she attempted to clarify some points contained in the State report. She expressed Colombia's openness to dialogue with the Committee and insisted that feedback and recommendations from the Committee were very much appreciated. Although generally members of the Committee expressed their dismay regarding the late submission of Colombia's report, Mr Francisco Alba welcomed Colombia's 'very clear, frank and non rhetorical presentation.'

### Overview of key issues

The following overview addresses eight of the Committee's concluding observations following the examination. They were identified on the basis of those themes that the Committee dedicated most time to, whether they requested follow-up on implementation, and whether the final recommendation was specific and implementable within a certain timeframe. Each is assessed according to how the issue was addressed in the examination, including the initial views of the State, questions, comments and responses provided.

Overall, the concluding observations of the Committee on Migrant Workers are not very specific, particularly in comparison with those of other treaty bodies. Most recommendations 'invite' the State 'to consider' changing its legislation or policy. Only one recommendation asks the State 'urges the State party to complete [the process of acceding to additional conventions] *as soon as possible*'<sup>4</sup> and none of the recommendation is clearly time bound.

The Colombian delegation appeared extremely co-operative and engaged in a constructive, relatively self-critical interaction with the Committee. Although some members of the Committee regretted the small delegation was not supported by a delegation from other ministries, Ms Vargas managed to respond to all questions during the review and provided mostly clear answers. The Committee expressed its satisfaction about Colombia's cooperative spirit.

---

<sup>4</sup> Emphasis added.

## Constitutional and legislative framework

In its concluding observations, the Committee stated:

*The Committee considers that the reservations entered by the State party in respect of articles 15, 46 and 47 of the Convention are above all of a declaratory and technical nature and are in fact not really necessary, as there is no conflict between the Convention's objectives and the State party's relevant legislation.*

*The Committee recommends that the State party consider withdrawing the reservations entered in respect of articles 15, 46 and 47 of the Convention.<sup>5</sup>*

Committee member Mr Kariyawasam pointed out Colombia's reservations to the Convention regarding article 15, 46 and 47. He underscored that the Committee would prefer not to have any reservations to the Convention and given that so many years have passed since Colombia's ratification in 1995, the Committee member asked whether Colombia could consider removing them. Colombia noted it had a reservation with regard to the seizure of assets of migrant workers, but argued that the reservation was on an 'equal footing with Colombians'. Ms Vargas explained that 'private interest has to be subordinate to public interest'. She gave the example of a planned new airport in Bogotá where the State has the right to confiscate property with just compensation to be paid to the owners.

The chairperson, Mr Abdelhamid El Jamri, indicated that Colombia's reservations to the Convention were based on a misunderstanding of the article's provisions and given the above explanations by Ms Vargas, he suggested there were no motives to maintain these reservations.

## Dissemination of the Convention

In its concluding observations, the Committee stated:

*The Committee recommends that the State party promote ongoing training programmes on the content of the Convention for all officials working on migration issues or in contact with migrant workers and members of their families, including at the local level.*

*The Committee also recommends that the State party make the provisions of the Convention widely known to both Colombian migrant workers abroad and foreign migrant workers residing or in transit in Colombia, as well as to communities as a whole, through, inter alia, long-term awareness-raising campaigns.<sup>6</sup>*

The Committee's country Rapporteur, Ms Medina, asked how the Colombian Government disseminates the Convention. She underscored the importance of training public officials on the substance of the Convention and recommended that Colombia establish specific trainings and learning processes based on the Convention's principles.

Ms Vargas indicated that there were no such specific training programmes for officials and information regarding the Convention was generally disseminated to the authorities having a role in migration issues. Ms Vargas acknowledged that there is a need to have training workshops focusing on the Convention. However, she argued that as there are not a lot of migrant workers in Colombia, the Government was solving problems related to migrant workers on a case-by-case basis rather than through training programmes.

<sup>5</sup> CMW/C/COL/CO/1, at paragraphs 8 and 9, available at <http://www2.ohchr.org/english/bodies/cmw/docs/CMW.C.COL.CO.1AUV.doc>,

<sup>6</sup> Ibid. at paragraphs 17 and 18.

Another concern expressed by the Committee was in relation to Colombians living abroad. The Committee enquired whether the Government provides these persons with information concerning their rights. On this point, Ms Vargas informed that Colombian consuls abroad disseminate such information. However, these cases are also dealt with on an ad-hoc basis. Generally, if a Colombian requests assistance from a consulate, the case is analysed and accordingly he is informed of his rights.

### Registration, expulsion and deportation of migrants

In its concluding observations, the Committee stated:

*The Committee invites the State party to provide detailed information on the procedures applied by the Administrative Department of Security for the detention of migrant workers and members of their families. The Committee would also like to receive detailed information on the registration system and the physical conditions of the facilities in which migrants are held in the DAS centres.<sup>7</sup>*

*The Committee recommends that the State party adopt the necessary measures to ensure that expulsions/deportation procedures are respected, in compliance with article 22 of the Convention, in order to guarantee, in particular:*

*(a) That, in all cases, interested parties have the right to submit the reasons why they should not be expelled and to have their case reviewed by the competent authority, unless compelling reasons of national security require otherwise;*

*(b) The right to seek a stay of the decision of expulsion, pending the review mentioned in the above subparagraph;*

*(c) The right to seek compensation if a decision of expulsion that has already been executed is subsequently annulled;*

*(d) The Committee also recommends that the State party consider conducting a study of the compatibility of national legislation and the Convention in the area of expulsion and deportation.<sup>8</sup>*

A recurring point of discussion was the non-existence of retention or migration centres. Additionally, Committee Member Mr Alba underscored that entering Colombia without documents is not considered a criminal offence and thus no criminal sanctions could be taken. Instead, only administrative sanctions can be pronounced, which are to be clarified in 36 hours, which he felt, was too short a period. Nevertheless, he expressed concern regarding the situation of migrants during these 36 hours, given that there are no migration centres. Further, Mr Alba questioned the delegation whether there was a way for these detained to appeal to the administrative decision taken.

In response, Ms Vargas explained that a person could only be detained on a decision by a judicial body and within 36 hours a person had to appear before a judge. Further, she clarified that the Security Department is responsible for the migration control and for handling the retention of migrants. Addressing the concern about the lack of migration centres, she added in a brief and imprecise way that the Security Department ‘disposed of premises’ to retain persons during a maximum duration of 36 hours. While the period of 36 hours seems to be generally respected, Ms Vargas acknowledged that sometimes ‘there is a difference between theory and practice’ and that deportation or expulsion does not always take place within that timeframe. In conclusion, Ms Vargas referred to a project of establishing a centre for migrants in Bogotá, and developing information centres for migrants at the airport.

Additionally, the Committee was preoccupied with regard to expulsions and deportations in Colombia and made the following recommendations:

<sup>7</sup> Paragraph 22.

<sup>8</sup> Paragraph 28.

28. *The Committee recommends that the State party adopt the necessary measures to ensure that expulsions/deportation procedures are respected, in compliance with article 22 of the Convention, in order to guarantee, in particular:*

(a) *That, in all cases, interested parties have the right to submit the reasons why they should not be expelled and to have their case reviewed by the competent authority, unless compelling reasons of national security require otherwise;*

(b) *The right to seek a stay of the decision of expulsion, pending the review mentioned in the above subparagraph;*

(c) *The right to seek compensation if a decision of expulsion that has already been executed is subsequently annulled;*

(d) *The Committee also recommends that the State party consider conducting a study of the compatibility of national legislation and the Convention in the area of expulsion and deportation.*<sup>9</sup>

Ms Medina underscored her preoccupation in regard to expulsions and deportations to the borders in Colombia. She stipulated that Colombia's dispositions in the area of expulsions and deportations were incompatible with the Convention. She urged Colombia to bring national practices of expulsion and deportation in line with the Convention's provisions. Focusing in particular on collective expulsion she stressed that collective expulsion was not yet prohibited in Colombia and questioned the delegation whether a legal reform was planned in to remedy this shortcoming. Further, she added that too much freedom was given to the judges in expulsion decisions and suggested the rules should be more narrowly drawn. On this point, she asked what kind of legal resources were available for persons when there is a decision related to deportation or expulsion taken. The delegation informed that appeals could be made to decisions regarding expulsions and deportation, but when it came to expulsions for penal matter, for instance if someone had committed a crime, no appeal was possible.

### Data on migration

In its concluding observations, the Committee stated:

15. *The Committee recommends that the State party:*

(a) *Continue its efforts to create a database that takes into account all aspects of the Convention and includes detailed data on the situation of migrant workers in Colombia, migrants in transit and emigrants;*

(b) *Include in this database data and statistics on migrant women, unaccompanied migrant children and children of migrant workers who remain behind in the country, and frontier and seasonal workers. When it is impossible to obtain precise information, for example on migrant workers in an irregular situation, the Committee would appreciate data based on studies or on approximate estimates;*

(c) *Carry out studies on the impact of migration on children, including children of Colombian migrants who remain in the country;*

(d) *Provide detailed information to the Committee on the situation of Colombian female migrant workers abroad.*<sup>10</sup>

Both Mr El Jamri and Ms Medina highlighted the need for data on migrant children and on children separated from their families. Ms Medina studies on the situation of migrant children as mentioned in the initial presentation were not only targeted at the local level, but also conducted at the national level to define a national policy in that regard. Further, Ms Medina stated there is no data in the report to migrants in transit and requested the delegation to elaborate more on this subject. She argued that transit migration should be registered in order to define the distribution of the latter divided in age, nationality and sex.

<sup>9</sup>Ibid. at para. 28.

<sup>10</sup> Ibid. at para. 15.

Regarding migrant children Ms Vargas conceded there were no studies at the national level. So far, two studies had been carried out, confined to one municipality in Colombia, and focused on the threats to the rights of unaccompanied children. Ms Vargas did not refer to any data regarding women migrants. Regarding migrant in transit, Ms Vargas argued that there is a lot of movement of agricultural workers across borders and these are governed by ‘good relations between countries’.

### Trafficking

In its concluding observations, the Committee stated:

36. *The Committee recommends that the State party continue and redouble its efforts to combat trafficking in persons, especially women and children, and the smuggling of migrant workers, in particular by adopting measures:*
- (a) To combat the dissemination of false information regarding emigration and immigration;*
  - (b) To detect and put a stop to the illegal or clandestine movement of migrant workers and their family members and to impose effective sanctions on individuals, groups or entities that organize or direct such movements or provide assistance to that end;*
  - (c) To impose effective sanctions on individuals, groups or entities that use violence, threats or intimidation against any migrant workers or their family members;*
  - (d) To ensure consular protection for victims of trafficking abroad;*
  - (e) To step up campaigns for the prevention of irregular migration, including human trafficking.<sup>11</sup>*

Several Committee members expressed strong concern regarding trafficking in persons to and from Colombia. Ms Medina asked whether there are assistance programmes for the rehabilitation of victims of trafficking, whether Colombia provides any housing for victims, and how the Government prevents trafficking of children from Colombia.

Ms Vargas drew attention to the Government’s awareness raising campaigns through the media and the establishment of seminars at the national and international level with the aim of raising awareness in border areas. Regarding trafficking of children, Ms Vargas explained that a passport was needed in order for a child to leave the country, and when it was only accompanied by one of the parents, a legal authorisation was requested. If the child is to leave the country alone, the child has to obtain certificates from the visa authority and the ‘family unit’ needs to be consulted in order to check the reliability of the certificate.

She also added that in recent times, there have been a greater number of persons coming from Asia and Africa transiting through Colombia with the goal of reaching the United States. She informed the Committee that Colombia was now in discussion with Panama and other Central American countries to deal with that situation. She assured the delegation that suspected cases of trafficking were always investigated. Generally relevant embassies are contacted, and the Government also relies upon the help of the International Organization for Migration in the Latin American region to solve such cases.

### Conclusions and next steps

At the end of the session, Ms Vargas explained that the delegation had found it difficult to prepare the State report, because it did not quite know ‘what the Committee is expecting and how things will be interpreted’. She acknowledged that in Colombia many efforts had still to be achieved, and indicated that ‘not everything was very well regulated in Colombia and we know there are still a lot of challenges ahead’.

Ms Medina thanked the delegation for the presentation and replies to the questions. She welcomed the progress made in the area of migration in Colombia, especially the ongoing process of establishing an

<sup>11</sup> Ibid. at para. 36.

integrated migration policy dealing with immigration and emigration. Ms Medina ended on highlighting her main concerns, namely the need to implement a training programme based on the Convention, and the need to reform the procedures regarding expulsions and deportation in Colombia. In conclusion, she encouraged Colombia to carry on with the good work.

The Committee recommended that Colombia submit its second report on 1 May 2011.

*Last revised and updated: 5 November 2009.*

## **TREATY BODY MONITOR STAFF**

**Eléonore Dziurzynski**, Communications Officer, Geneva

**Gareth Sweeney**, Deputy Manager, Geneva

**Katrine Thomassen**, Manager, Geneva

**Michael Ineichen**, Human Rights Officer, Geneva

**Michelle Evans**, Representative to the UN, New York

**Vanessa Jackson**, Human Rights Officer, New York

## **AUTHOR OF THE COLOMBIA REPORT**

**Ladina Knapp**, Intern

## **ABOUT THE PUBLICATION**

The *Treaty Body Monitor* forms part of the Human Rights Monitor Series produced by ISHR. It reports on each country reviewed by the six treaty bodies (all but the Committee on the Rights of the Child) and provides an overview of every treaty body session. It is currently an online publication that can be found at [www.ishr.ch](http://www.ishr.ch).

## **COMMENTS AND FURTHER INFORMATION**

We would welcome your feedback on this publication so please send any comments and suggestions to [information@ishr.ch](mailto:information@ishr.ch). You can check the latest Treaty Body Monitor reports published on [www.ishr.ch](http://www.ishr.ch).

## **COPYRIGHT, DISTRIBUTION AND USE**

Copyright © 2009 International Service for Human Rights

Material from this publication may be reproduced for training, teaching or other non-commercial purposes as long as ISHR is fully acknowledged. You can also distribute this publication and link to it from your website as long as ISHR is fully acknowledged as the source. No part of this publication may be reproduced for any commercial purpose without the prior express permission of the copyright holders.

ISHR accepts no responsibility for any inaccuracies arising from or connected to unapproved or unofficial translations of its publications or parts thereof.

## **DISCLAIMER**

While every effort has been made to ensure the accuracy and reliability of the information contained in this publication, ISHR does not guarantee, and accepts no legal liability whatsoever arising from any possible mistakes in the information reported on, or any use of this publication. We are however happy to correct any errors you may come across so please notify [information@ishr.ch](mailto:information@ishr.ch).