



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

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

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

Initial reports of States parties due in 2004

COLOMBIA*

* 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.

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Introduction

1. The Congress of Colombia adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by Act No. 146 of 13 July 1994. The Convention was promulgated by Decree No. 2084 of 1995, published in *Official Gazette* No. 42129 of 29 November 1995. Act No. 146 of 13 July 1994 was declared enforceable¹ by the Constitutional Court, through Judgement No. C-106-95 of 15 March 1995, but articles 15, 46 and 47 were declared enforceable on the understanding that Colombia retains the right to

¹ A provision is declared enforceable by the Constitutional Court when it is deemed to be consistent, both from a formal and material perspective, with the values, principles, rights and guarantees contained in and promoted by the Constitution.

In accordance with article 241, paragraph 10, of the Constitution, the Constitutional Court is responsible for reviewing the constitutionality of international treaties and the acts ratifying them. According to Judgement No. C-468 of 1997, the characteristics of this review are as follows: “A significant feature of the constitutional review of an international treaty is that it is conducted prior to the execution of the treaty but after its adoption by Congress and approval by the Government; it is automatic, since it is not subject to a referendum but the act must be submitted directly by the President of Colombia to the Court within six days following government approval; it is exhaustive to the extent that the formal and material aspects of the act and treaty must be examined by the Court in the light of the full text of the Constitution; it has the force of *res judicata* since the Court must “make a definitive ruling on the enforceability of international treaties and the acts ratifying them” (Constitution, art. 241, para. 10), which precludes subsequent review by way of an *actio popularis* on grounds of unconstitutionality; and, lastly, it is a *sine qua non* for the ratification of the relevant agreement, that is, so that the agreement concerned may become an international legal instrument.”

The review of procedural irregularities conducted by the Court with regard to international treaties and the acts ratifying them, in accordance with article 241, paragraph 10, of the Constitution, is aimed at verifying the procedure followed during the negotiation and signing of a treaty - that is, to examine the validity of the representation of Colombia during the negotiation and conclusion of the instrument, the competence of the officials involved, and also the preparation of the act of ratification in Congress and the President’s due approval of the relevant draft.

The substantive review involves examining the provisions of the text of the international treaty and its act of ratification in order to determine whether these are consistent with all the provisions of the Constitution, irrespective of considerations of suitability and appropriateness, which do not fall within the competence of the Constitutional Court in the context of the review.

In accordance with Judgement No. C-120 of 2004, “In view of the specific nature of the acts ratifying public treaties, legislators may not alter their content through the introduction of new provisions since their function is to approve or reject the treaty as a whole. If the treaty is multilateral, it is possible to make interpretative declarations and, unless they are expressly prohibited, reservations that do not affect the object and purpose of the treaty may also be introduced.”

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 34 of the Constitution. The Convention was ratified and entered into force for Colombia on 24 May 2005.

2. Colombia guarantees all the rights recognized in the Convention and to date has received no information concerning any violation or complaint brought before the national authorities or the Office of the United Nations High Commissioner for Human Rights.

I. INFORMATION OF A GENERAL NATURE

A. Political and administrative structure of Colombia

3. The territory of Colombia covers an area of 1,141,748 square kilometres and is divided into the following territorial units: departments, districts, municipalities and indigenous territories. There are currently 32 departments and 1,098 municipalities, and the municipality is the basic unit of the political and administrative division of the State. Colombia is also a country of regions, from a cultural, environmental and geographic perspective. There are five major regions: the Atlantic coast, the biogeographical region of Chocó (or Pacific region), the Orinoco region, Amazonia and the Andean region, characterized by significant cultural diversity.

4. Colombia is a social State governed by law and organized as a unitary, democratic, participatory and pluralistic Republic, decentralized with autonomous territorial units. It is founded on respect for human dignity, the work and solidarity of the individuals constituting it and the primacy of the general interest. The political organization is determined by the Constitution,² which establishes three branches of public power: the executive, the legislature and the judiciary. The executive branch is headed by the President of the Republic, who is the head of State and head of Government, and is elected for a period of four years by popular vote. The last presidential election was held in May 2006, and resulted in the re-election of Álvaro Uribe Vélez. Ministries, administrative departments, public institutions, supervisory bodies and State-owned industrial and commercial enterprises, as well as departmental governorates and municipal authorities are also part of the executive branch. Governors and mayors are elected by popular vote.

5. The legislative branch consists of the bicameral Congress of the Republic. Its functions include: amending the Constitution, adopting legislation and exercising political control over the Government and the administration. The upper chamber, or Senate, is made up of 100 senators who are elected by a national constituency, and two additional senators elected by a special constituency for indigenous peoples. The lower chamber, or House of Representatives, is made up of 241 representatives, elected by territorial and special constituencies, which provide representation for indigenous and Afro-Colombian communities. Legislators are elected for a term of four years.

² Constitution of Colombia 1991, Title V “Organization of the State”, arts. 113 ff.

6. Article 171 of the Constitution entitles citizens who reside abroad or are out of the country to vote in elections for the Senate. The rules governing the international constituency for the House of Representatives were established by Decree No. 4766 of 2005, which provides that the international constituency shall consist of Colombians residing abroad, who may vote for a seat in the House of Representatives. In this constituency, only the votes cast outside the national territory by citizens residing abroad who were formerly listed on the relevant electoral roll shall be counted.

7. The judiciary or public administration of justice renders independent and autonomous decisions. It consists of the Constitutional Court, which is responsible for the maintenance of the integrity of the Constitution; the Supreme Court of Justice, which is the highest court of ordinary jurisdiction (criminal, civil and labour chambers); the Council of State (the highest court dealing with administrative disputes and the chamber of consultancy and the civil service); the Higher Council of the Judicature (the supreme administrative and disciplinary organ of the judicial branch); the Office of the Attorney General (the Attorney General, designated prosecutors), and the higher judicial district courts and administrative courts (usually located in departmental capitals); circuit and municipal courts and the recently established administrative courts.

8. The public supervisory bodies are made up of the Office of the Comptroller-General and the Public Prosecutor's Office. The latter is the responsibility of the Procurator-General, who is elected by the Senate; its function is to ensure compliance with the Constitution, laws, judicial decisions and administrative acts, protect human rights and defend the collective interests of society and the environment. The Ombudsman, under the direction of the Public Prosecutor's Office, ensures the promotion, exercise, dissemination and defence of human rights, and is elected by the House of Representatives.

9. Colombia has a long democratic tradition; the last elections held were the legislative and presidential elections in 2006. In the context of the legislative elections, 20 parties were registered in lists of candidates vying for 100 national constituency seats in the Senate and for another two seats in the special indigenous constituency. For the House of Representatives, 412 lists were registered for the territorial constituencies (161 seats), 6 for the indigenous constituencies (1 seat), 29 for the Afro-Colombian communities (2 seats) and 22 for the special international constituency for Colombians residing abroad (1 seat). The seat for minorities will be filled by the list receiving the highest number of votes from minorities across the country. The parties receiving the highest number of votes at those elections were Partido Social de Unidad Nacional, Cambio Radical, Partido Liberal, Partido Conservador and Partido Polo Democrático Alternativo.

B. Population

10. The last population census was conducted in Colombia in 2005 and its results began to be published in May 2006.³ This census was conducted on the basis of Decree No. 1100 of 2005, which set the beginning of the census year at 22 May 2005. The first results show that there

³ In view of the fact that the results of the population census conducted over the past year began to be published only in May 2006, this report does not take into account all the statistical results of the census.

are 41,242,948 persons ordinarily residing in the country. In addition, it is estimated that there are 3,337,107⁴ Colombians living abroad. The people of Colombia are predominantly mestizo and there are four main ethnic and social groups that are geographically and culturally distinct from the general population: the Afro-Colombian communities, the indigenous peoples and the native islanders (*raizales*) of San Andrés y Providencia, and the Roma, or Gypsies.

C. National sociodemographic indicators

11. According to the 2005 Ongoing Household Survey of the National Department of Statistics (DANE), it is estimated that 51 per cent of the Colombian population is female and 49 per cent is male, and 36.67 per cent are children under the age of 18; 32 per cent are under the age of 15, 10 per cent are under 5 and 2.25 per cent are under 1.⁵ Moreover, 74 per cent of the Colombian population lives in urban areas and 26 per cent in rural areas.

Table 1
Demographic indicators 1998-2005

Indicators	1998	1999	2000	2001
Total population	40 826 814	41 589 018	42 321 386	43 070 703
Total men	20 177 331	20 554 940	20 914 523	21 282 226
Total women	20 649 484	21 034 078	21 406 863	21 788 477
Total urban population	28 734 719	29 432 716	30 048 759	30 693 455
Total rural population	12 038 276	12 106 296	12 250 542	12 341 939
Under 1 year old	975 042	974 809	983 845	984 025
Under 5 years old	4 783 064	4 783 911	4 783 709	4 784 582
Under 15 years old	13 660 046	13 780 236	13 850 555	13 962 496
Under 18 years old	16 135 021	16 268 561	16 355 613	16 490 400

Indicators	2002	2003	2004	2005
Total population	43 834 117	44 583 575	45 325 260	46 045 111
Total men	21 666 432	22 043 893	23 115 883	22 562 104
Total women	22 167 685	22 539 682	22 209 377	23 483 007
Total urban population	31 346 069	32 017 189	32 700 477	33 375 462
Total rural population	12 429 770	12 514 245	12 594 476	12 669 647
Under 5 years old	4 790 163	4 791 042	4 787 252	4 787 710
Under 15 years old	14 059 095	14 121 712	14 191 783	14 231 966
Under 18 years old	16 610 523	16 716 529	16 818 259	16 888 819

National forecast.

Source: DANE, Colombia. Departmental population projections, by age and gender, 1995-2005.

⁴ *Source:* National Department of Statistics (DANE), 22 May 2006.

⁵ *Source:* DANE, March 2006.

D. Constitutional, legislative, legal and administrative framework governing the implementation of the Convention

12. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was ratified by Act No. 146 of 1994. To implement the Convention, Colombia has a constitutional and legislative framework that fully guarantees the rights of migrant workers and members of their families. In this regard, it is essential to cite article 4 of the Colombian Constitution:

“The Constitution is the supreme law. In all cases of incompatibility between the Constitution and the law or any other legislation or regulation, the constitutional provisions shall apply. It is the duty of citizens and of aliens in Colombia to abide by the Constitution and the laws, and to respect and obey the authorities.”

13. In the course of reviewing the constitutionality of the ratification of the Convention, the Constitutional Court noted that:

“(…) the present Constitution 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.”⁶

14. Nevertheless, every State should be aware of the presence of foreign nationals who enter its territory, of their purpose in doing so and of their activities, since this knowledge enables States to exercise effective control, which also safeguards the interests of Colombian nationals. This rule, however, does not take precedence over respect for the fundamental rights of foreigners, to which all States are committed.

15. On the subject of migration, the Colombian Constitution stipulates that:

“(…) aliens shall enjoy, in the territory of the Republic, guarantees granted to nationals, except for the limitations established by the Constitution or by law.”

16. One of these exceptional limitations is established in Act No. 141 of 1961, which protects national labour in accordance with employment policy, economic and social development and transfer of technology. This provision does not disregard the dignity or right to work of foreign nationals, but sets limits on their employment in order to ensure that Colombian nationals are not displaced by foreign labour. Article 74 of Act No. 141, which deals with proportional employment, provides that:

“Every employer with more than 10 employees must employ a proportion of Colombians accounting for no less than 90 per cent of the regular staff and no less than 80 per cent of the qualified, specialist or management staff or personnel in a position of responsibility.”

⁶ Constitutional Court of Colombia, Judgement No. C-106 of 1995.

17. The Constitution, pursuant to the principle of non-discrimination, establishes rights applicable to migrant workers and members of their families. Article 13 guarantees the right to equality; article 12 provides for the right to personal integrity; article 17 prohibits slavery, servitude and trafficking in persons; articles 19 and 20 guarantee the rights to freedom of religion and to freedom of opinion and expression, respectively; article 15 establishes the right to privacy; article 44 provides for the right to a name and nationality; and articles 23 and 74 guarantee the right to information.

18. In order to develop and implement Colombia's foreign policy, several important amendments have been made to Colombian legislation on migration, to encourage, among other activities, tourism and international investment and facilitate the entry of specialized personnel, entrepreneurs, lecturers and teachers.

19. Based on the above, Colombia's current migration policy was established by Decree No. 4000 of 2004 which, together with ministerial resolutions No. 255 of 26 January 2005 and No. 273 of 27 January 2005, regulates the entry and stay of foreign nationals in Colombia.

20. The following box illustrates the regulatory framework governing the stay of migrant workers and members of their families in Colombia:

Box I. Regulations governing migrant workers and members of their families

- Decree No. 4000 of 30 November 2004, which establishes provisions for the issuance of visas, immigration control and other provisions relating to migration. This Decree entered into force on 1 February 2005.
- Decree No. 4248 of 16 December 2004, amending Decree No. 4000 of 30 November 2004 which entered into force on 1 February 2005.
- Resolution No. 255 of 26 January 2005, which establishes the requirements for the different types and categories of visas established by Decree No. 4000 of 2004.
- Resolution No. 273 of 27 January 2005, concerning nationals of countries not requiring a visitor's visa to enter or stay in the country as visitors; nationals of countries requiring a visitor's or business visa to enter or stay in the country in that capacity and not requiring prior authorization from the visa-issuing authority; and the requirement for prior consultation with the visa-issuing authority for any type or category of visa to be issued to nationals of countries not mentioned or described in articles 1 and 2 of resolution No. 273 of 2005.
- Resolution No. 4420 of 21 September 2005, supplementing article 1 of resolution No. 273 of 2005 to include Slovenian nationals, who may enter the country as tourists or temporary visitors not requiring a visa. This regulation entered into force on 4 November 2005.
- Article 74 of the Substantive Labour Code establishes regulations governing working conditions for foreign nationals in Colombia. In addition, the Commercial Code will have to be brought into line with regulations governing the free trade agreements currently under negotiation between Colombia and various States.

21. The following decrees amend or regulate sections of the above-mentioned provisions, all of which are included as annexes to this report:

(a) Decree No. 164 of 2005, amending Decree No. 4000 of 30 November 2004 and Decree No. 342 of 28 February 2002;

(b) Decree No. 2107 of 8 October 2001 repealed by Decree No. 4000 of 2004, with the exception of articles 29 to 38 and part of article 28 regarding visa type, category and code, which remain in force;

(c) Decree No. 342 of 28 February 2002, supplementing and amending Decree No. 2107 of 8 October 2001.

22. The regulations governing the exercise of various professions in Colombia that represent the sectors employing the majority of immigrant workers in the country, are mentioned below.

Box II. Regulations governing professions

- Act No. 842 of 2003, concerning engineering
- Act No. 9 of 1974, concerning geology
- Act No. 37 of 1990, concerning economics
- Act No. 14 of 1962, concerning medicine and surgery
- Act No. 266 of 1996, concerning nursing
- Act No. 51 of 1986, concerning electrical and mechanical engineering
- Act No. 60 of 1981, concerning business administration
- Act No. 13 of 1989, concerning other professions

E. Bilateral, regional and multilateral agreements in the field of migration

23. In addition to the provisions of the bilateral, regional and multinational agreements signed by Colombia, all nationals of the countries referred to in resolution No. 273 of 2005 have been permitted to enter Colombia without requiring a visa when entering as tourists or visitors.

24. Pursuant to resolution No. 273 of 2005, nationals of Guatemala, Costa Rica, El Salvador, Honduras, Belize and Panama may enter the country for up to 180 days in the same calendar year. Furthermore, foreigners of the nationalities mentioned in article 1 of resolution No. 273 of 2005 are authorized to undertake the following activities as visitors:

(a) As visiting tourists:

(i) Tourism: leisure and recreational activities;

- (b) As temporary visitors:
 - (i) Trade, industrial or business activities and networking;
 - (ii) Staff selection interviews in public or private institutions;
 - (iii) Journalistic activities;
 - (iv) Cultural, sports or scientific activities;
 - (v) Intensive courses or short programmes of study;
 - (vi) Academic activities, seminars, conferences, symposia or exhibitions.

25. It should be borne in mind that Central American nationals having entered the country in the circumstances described above, who do not require a visa and are interested in developing some form of business, may, without leaving the country, apply for and obtain the following types of visa:

- (a) Resident investor visa;
- (b) Business visa.

26. In order to perform other activities, foreign nationals may, without leaving the country, apply for the following visas: a temporary visa for persons whose father or mother is a Colombian national, whose spouse or steady partner is a Colombian national, or who are students, refugees or asylum-seekers; and special visas for pensioners and medical treatment, or for persons who qualify for them in accordance with article 29 of Decree No. 4000 of 2004, which may be issued in Colombia for the first time.

27. The entitlements provided under Colombian migration legislation include the possibility for Central American nationals to execute a number of transactions before public notaries and at the Notary and Registration Monitoring Office, as tourists or temporary visitors, that is, with a permit to enter and stay. The only requirement is that they present identification in the form of a valid passport, unless they hold one of the visas provided for in Decree No. 4000 of 2004, which are valid for more than three months. In short, nationals of a Central American country who have a visa or a temporary visitor's permit may:

- (a) Sign public instruments;
- (b) Engage in legal transactions;
- (c) Enter into partnership with existing business corporations or set up a business;
- (d) Purchase immovable property;
- (e) Register with the commercial registry;

- (f) Own businesses;
- (g) Make international or foreign investments;
- (h) Have a civil marriage.

28. With regard to foreign investment, it should be recalled that one of the requirements established by law is precisely that the foreign national is not domiciled in the country and that the investment should be direct and made by an individual. Investment is defined as “foreign” when it is intended for:

- (a) Purchase of immovable property;
- (b) Capital in a company, which increases participation in the company;
- (c) Purchase of stocks and social quotas and investment in convertible bonds;
- (d) Acquisition of rights to separate assets.

29. It is important to highlight the migration-related benefits for Central American nationals who make foreign investments in Colombia. As a result, foreigners may:

- (a) Apply for a resident investor visa, which has indefinite validity;
- (b) Apply for Colombian citizenship after holding a resident investor visa for two years.

30. An agreement was concluded between the Government of Colombia and the Governments of El Salvador, Guatemala and Honduras to establish a “visa group” to address issues related to application procedures and requirements, processing of applications, issuance and use of visas in order to promote economic, trade and cultural exchanges.

31. The States parties agree that their nationals may enter the territory of another State party without requiring a visa, if they do not intend to settle in any other party and if they intend to carry out one of the following activities, provided that this does not involve employment:

(a) As visiting tourists and temporary visitors, participating in academic activities, seminars, conferences, symposia, exhibitions; enrolled in intensive courses and short programmes of study that do not exceed an academic semester; receiving medical care; conducting staff selection interviews in public or private institutions; trade and/or business networking, for up to 180 calendar days in one calendar year;

(b) As visiting technical staff, providing urgent technical services for public or private bodies, on presentation of a letter of sponsorship from the body concerned attesting to the urgency of the service required. The validity of the letter shall not exceed 45 calendar days in one calendar year.

32. Nationals of the above-mentioned States parties who have entered the country in the circumstances described above, who do not require a visa and who are interested in engaging in some form of business, may, without leaving the country, apply for and obtain a resident investor visa or business visa.

33. Nationals of one of the parties who have entered the territory of another party in the circumstances described above and who do not require a visa, may neither earn a salary from a natural or legal person established in this country nor engage in activities covered by any type of visa.

34. The parties agree to grant a business visa, valid for multiple entries for up to four years, and authorize stays of up to six months for each entry, to nationals of another party who:

(a) Are legal representatives, managers or executives of a foreign company in the trade, industrial or service sector and have economic ties with a national or foreign company in one of the parties. They may carry out management activities related to the interests they represent, such as attending shareholder meetings, conducting business, supervising the management of the companies with which they have legal, strategic or economic ties;

(b) Are able to prove their status as traders, industrialists, business people or marketing students, based on verifiable economic ties with a company in one of the parties.

35. The parties agree to grant a temporary work visa, valid for multiple entries for up to two years, to nationals of another party who:

(a) Are employed by a public or private enterprise, body or institution, or by an individual, and wish to enter or stay in one of the parties to work or carry out an activity in their area of specialization or to provide technical training;

(b) Wish to enter or stay in one of the parties by virtue of academic agreements between higher educational institutions or inter-administrative agreements in specialized areas. Such persons should prove their suitability by presenting their duly validated qualifications or their employment certificates if they are not professionals;

(c) Are hired as journalists by a national or international news or information agency, or who have correspondent status, which should be duly accredited;

(d) Are members of artistic, sporting or cultural groups hired for their activity, if it is remunerated, and for a period of up to six months only;

(e) Are appointed by a State body or entity;

(f) Are managers or technical or administrative staff of a public or private body of a commercial or industrial nature, transferred from abroad to fill specific posts in their enterprises;

(g) Provide their services in the development of specific projects at the request of enterprises domiciled in the country, without being employed by those enterprises.

F. Characteristics and nature of migration flows

1. Characteristics of the immigrant population

36. The census conducted in 2005-2006 estimated the number of non-Colombian nationals resident in the country at 90,469. With regard to the immigrant population in the country, the table below shows the number of foreign nationals resident in Colombia, by nationality. Most of these foreigners are nationals of neighbouring countries, in view of their physical proximity and the existence of economic, social or cultural exchanges, as is the case with Ecuador and Venezuela.

Table 2

Foreign-born population - 15 main countries of origin

Countries	Number of persons	Percentage
Argentina	2 345	2.6
Brazil	1 307	1.4
Chile	1 499	1.7
China	1 338	1.5
Cuba	1 322	1.5
Ecuador	8 885	9.8
France	1 503	1.7
Germany	1 731	1.9
Italy	1 845	2.0
Mexico	1 974	2.2
Panama	1 344	1.5
Peru	3 007	3.3
Spain	4 281	4.7
United States	13 407	14.8
Venezuela	31 547	34.9
Others	13 134	14.5
Total	90 469	100.0

Source: DANE, Colombia. 2005 general census. Migration according to census.

37. Gender analysis based on the 2005 census shows that there is a higher proportion of foreign men than women, even though the difference is not considerable. The table below shows that the five regions with the highest concentration of non-Colombian nationals are Bogotá and the departments of Valle del Cauca, Antioquia, Norte de Santander and Atlántico. There is a larger number of immigrants in these regions, where most of the foreign investment takes place. The capital of Columbia ranks first because it is the city where most of the educational and cultural centres, diplomatic missions and head offices of international companies employing immigrant workers are based.

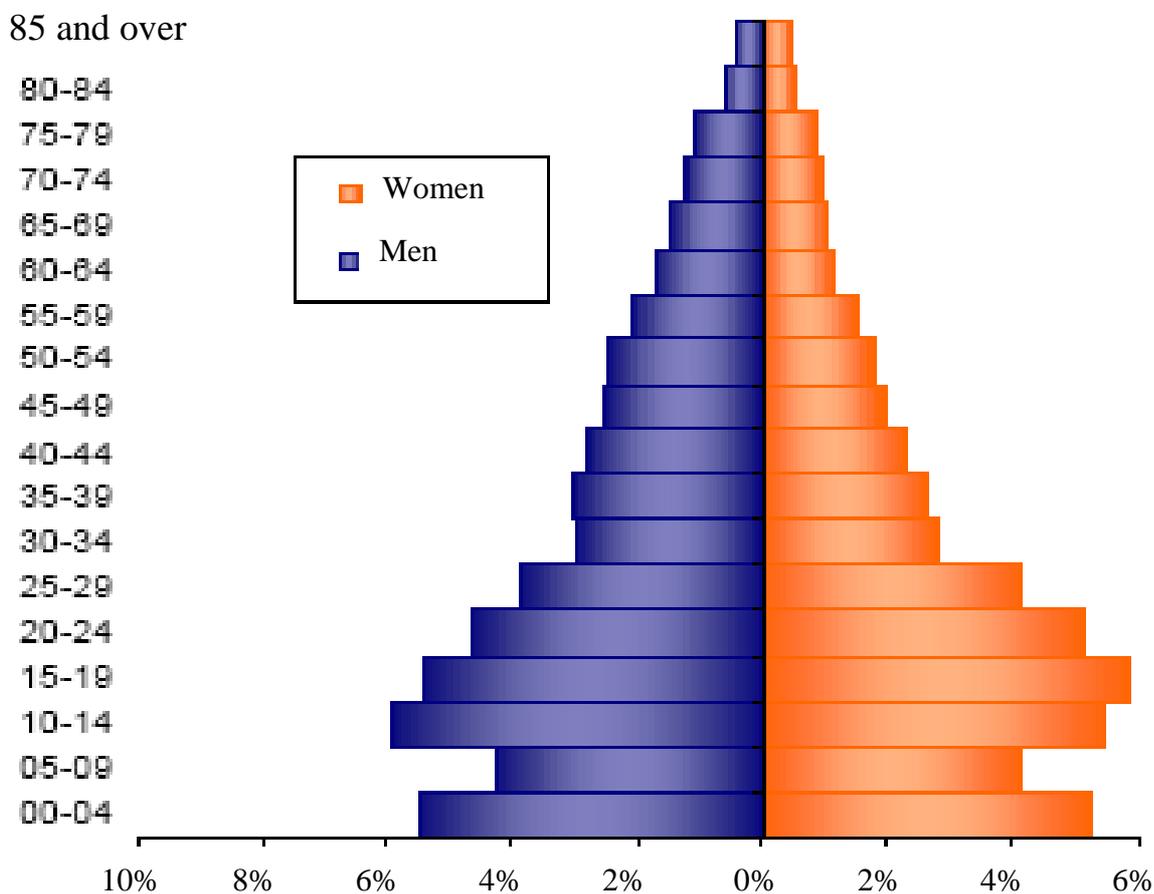
Table 3
Born abroad, by department of residence and gender

Department	Men	Women	Total	Participation
Bogotá D.C.	15 219	13 569	28 788	31.8
Valle del Cauca	6 313	5 895	12 208	13.5
Antioquia	4 765	4 399	9 164	10.1
Norte de Santander	4 211	4 073	8 284	9.2
Atlántico	2 998	3 002	6 000	6.6
Bolívar	2 495	2 267	4 762	5.3
Santander	1 510	1 585	3 095	3.4
Risaralda	1 331	1 194	2 525	2.8
Cundinamarca	1 260	1 075	2 325	2.6
Magdalena	894	916	1 810	2.0
Córdoba	677	723	1 400	1.5
Nariño	719	656	1 375	1.5
Sucre	687	665	1 352	1.5
Quindío	599	514	1 113	1.2
Cesar	453	535	988	1.1
Cauca	492	393	885	1.0
Caldas	473	401	874	1.0
Tolima	445	345	790	0.9
Boyacá	347	336	683	0.8
Meta	277	270	547	0.6
San Andrés	263	252	515	0.6
Arauca	135	171	306	0.3
Huila	118	91	209	0.2
Casanare	87	86	173	0.2
Caquetá	34	38	72	0.1
Putumayo	41	28	69	0.1
No information			157	0.2
Total	46 833	43 479	90 469	100.0

Source: DANE, Colombia. 2005 general census - variable processed in 905 municipalities.
Migration according to the census.

38. The population pyramid of persons born abroad who reside in Colombia shows that all ages are present and that a large percentage of persons who migrate to Colombia come with their family members. In Colombia, the immigrant communities have significant support networks, such as international schools, and centres or institutes promoting their culture; it is characteristic of Colombians to generate an atmosphere of kindness and hospitality towards persons of foreign origin.

Graph 1
Born abroad, 2005



Source: DANE, Colombia. 2005 general census. Migration according to the census.

2. Colombian labour market indicators

39. Table 4 below deals with labour market indicators, including the national total, for the period between September 2001 and November 2005. It is a very useful reference for determining the various employment rates per capita and relating those to the number of migrant workers in Colombia, who account for a very small part of the overall workforce.

Table 4
Overall labour market, 2001-2005

Category	2001	2002	2003	2004	2005
Total population	41 858 116	42 569 618	43 288 337	44 011 394	44 718 318
Working-age population	31 511 729	32 204 442	32 904 486	33 607 761	34 309 394
Economically active population	19 617 159	19 380 420	20 745 253	20 161 769	20 585 014
Employed	16 820 703	16 599 602	17 863 333	17 648 477	18 279 860
Unemployed	2 796 456	2 780 818	2 881 920	2 513 292	2 305 154
Open	2 554 253	2 523 524	2 586 877	2 339 685	2 150 383
Hidden	242 203	257 294	295 043	173 607	154 771
Inactive	11 894 570	12 824 022	12 159 233	13 445 992	13 724 380
Underemployed	6 848 016	6 796 602	6 857 356	6 364 988	6 711 137
Lack of hours	2 962 354	2 710 582	2 884 992	2 621 133	2 537 557
Inadequate employment (by skills)	684 086	556 783	633 352	580 041	704 675
Inadequate employment (by income)	5 654 044	5 665 575	5 596 591	5 155 767	5 508 079
Percentage of working-age population	75.28	75.65	76.01	76.36	76.72
Overall participation rate	62.25	60.18	63.05	59.99	60.00
Employment rate	53.38	51.54	54.29	52.51	53.28
Unemployment rate	14.26	14.35	13.89	12.47	11.20
Open unemployment rate	13.02	13.02	12.47	11.60	10.45
Hidden unemployment rate	1.23	1.33	1.42	0.86	0.75
Underemployment rate	34.91	35.07	33.06	31.57	32.60
Lack of hours	15.10	13.99	13.91	13.00	12.33
Inadequate employment (by skills)	3.49	2.87	3.05	2.88	3.42
Inadequate employment (by income)	28.82	29.23	26.98	25.57	26.76

Source: DANE, Ongoing Household Survey, Department of Job Promotion.

40. Migrant workers with a work permit are presented in table 5, which differentiates the foreigners who work in Colombia by nationality and gender. The overall number of work visas granted confirms that the number of people of foreign origin who are working in Colombia is very small.

Table 5
Entry of foreigners with a temporary work visa (July 2006)

Origin		Gender	Number
Total			13 589
Argentina		Women	163
		Men	391
Aruba		Women	29
		Men	48
Bolivia		Women	7
		Men	20
Brazil		Women	237
		Men	596
Canada		Women	52
		Men	66
Costa Rica		Women	55
		Men	174
Cuba		Women	18
		Men	39
Curaçao		Women	10
		Men	15
Chile		Women	82
		Men	218
Ecuador		Women	149
		Men	778
Spain		Women	190
		Men	541
United States of America		Women	556
		Men	2 714
France		Women	177
		Men	517
Honduras		Men	1
		Women	0
Jamaica		Women	3
		Men	3
Mexico		Women	165
		Men	418
Panama		Women	268
		Men	1 336
Peru		Women	293
		Men	894
Puerto Rico		Women	1
		Men	19
Dominican Republic		Women	22
		Men	29
United Kingdom of Great Britain and Northern Ireland		Women	
		Men	
Venezuela (Bolivarian Republic of)		Women	521
		Men	1 566
England		Men	31
Origin unspecified		Men	128
Origin unspecified		Women	49
Number of registered companies		Number of foreigners	
1 820		5 028	
Women	1 114	Men	3 914
		Total	5 028

Source: Ministry of Social Welfare, 2006.

3. Per capita rate of foreign labour in Colombia

41. According to the latest study carried out by the Ministry of Social Welfare in 2000, based on a proportionality⁷ analysis of the personnel working in 2,099 companies that employ foreigners (the analysis remains relevant in 2006), it was possible to establish that the participation of foreign labour was and continues to be low since of a total of 281,903 workers employed in these companies, only 4,589, or 1.62 per cent, were foreigners. Of the 134,804 qualified workers, specialists, managers and personnel in a position of responsibility, only 3.4 per cent were foreigners.

42. On the basis of the proportionality analysis of the personnel lists of 892 companies, 4,892 proportionality certificates were issued in 2003 in connection with applications to the Ministry of Foreign Affairs for work visas, and the same number of foreigners joined the Colombian labour market. In 2004, 4,690 migrant workers joined the labour market.

43. As at 22 November 2005, a total of 3,650 proportionality certificates had been issued. By country of origin, it was estimated that 15 per cent (689) of the applicants were from the United States of America, 7.92 per cent (364) were British, 5.92 per cent (272) were Canadian, 5.91 per cent (271) were Spanish, and 5.21 per cent (239) were Germans. Significant numbers of applicants were French, Italian, Chinese and Russian. Among the Latin American nationalities, the most prevalent were Argentines, Cubans, Venezuelans, Peruvians, Ecuadorians and Brazilians.

4. Industries that employ foreign labour

44. According to the study carried out by the Ministry of Social Welfare in 2000 (the study remains relevant in 2006), most foreigners (1,619) are engaged in economic activity No. 9 (Community, social and personal services); this is followed by economic activity No. 3 (Manufacturing industry) with 838 foreigners, economic activity No. 6 (Wholesale and retail trade) with 711, and economic activity No. 2 (Mines and quarries) with 614 foreigners.

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

A. Provisions to guarantee the application of the Convention

45. With regard to the legislative and other measures that might be necessary to implement the provisions of the Convention, article 93 of the Colombian Constitution states that “international treaties and agreements ratified by Congress that recognize human rights ... take precedence over domestic legislation”. With respect to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Constitutional Court, in

⁷ The proportion of foreign workers to national workers in any company based in Colombia as established by Colombian law.

Judgement No. C-106 of 1995, stated that “the Constitution is even more generous than the Convention ... it is clear that the Constitution protects foreign workers in the same way as it does all other inhabitants of the national territory”.

B. General principles

Principle of non-discrimination

46. Article 5 of the Colombian Constitution establishes that:

“The State recognizes, without any discrimination whatsoever, the primacy of the inalienable rights of the individual and protects the family as the basic institution of society.”

47. The Constitution therefore fully guarantees non-discrimination against migrant workers and members of their families “without distinction of any kind on grounds of sex, race, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic status, property, civil status, birth or other status”.

48. The Colombian Constitutional Court, in Judgement No. C-106/95, stated that:

“In the effective application 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. The States parties undertake to apply to all migrant workers the human rights laid down in the Convention, without any form of discrimination affecting migrant workers’ right to equality.”⁸

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

1. Article 8 of the Convention

49. In Colombia there are no restrictions on migrant workers and members of their families freely leaving Colombia. Article 1 of Decree No. 4000 of 2004 provides for the discretionary competence of the national Government to authorize foreigners to enter and stay in Colombia. The migration regulations in Colombia therefore exercise control over the entry of foreigners into the country, as investors or employees. The following visa categories are relevant to the application of the Convention:

⁸ Judgement No. C-106/95 of the Constitutional Court, Reporting Judge Eduardo Cifuentes Muñoz.

Table 6
Visa categories

Type of visa	Description	Validity	Cost (dollars)
Business visa	For foreigners who are able to prove their status as traders, industrialists, executives or business people who wish to enter the country for business reasons or to carry out market research.	Multiple entries for four years, authorizing a stay of up to six months for each entry.	US\$ 150
	For foreigners who are legal representatives, managers or executives of a foreign company, in the trade, industrial or service sector, who have economic ties with a national or foreign company in Colombia. Under this visa, such persons may carry out management activities, such as attending shareholder meetings, conducting business or supervising the management of the companies with which they have legal, strategic or economic ties.		
Special temporary visa	For foreigners who wish to enter the national territory as partners or owners of trading establishments or corporations domiciled in Colombia.	Multiple entries for two years. It expires if the foreigner is away from the country for more than 180 days.	US\$ 175
Temporary visitor's visa	For foreigners who: <ul style="list-style-type: none"> • Wish to enter the country without the intention of settling there, in order to carry out meetings and trade or business activities, provided that there is no existing labour contract. • Wish to enter the country to provide urgent technical services to public or private bodies, on presentation of a letter of sponsorship from that body attesting to the urgency of the service required. If the body requesting the service considers the foreign technician's presence in the country for a longer period of time to be indispensable, it must submit an application for a temporary work visa. 	Multiple entries within 180 calendar days in the same calendar year. Visiting technical staff are granted up to 45 days in the same calendar year.	US\$ 100

Type of visa	Description	Validity	Cost (dollars)
Resident investor visa	For foreigners who wish to settle in the country definitively and who have investor status. Foreigners shall be considered investors if they make a foreign direct investment in their own name in accordance with the provisions of the International Investment Statute, for the amount established by the Ministry of Foreign Affairs (currently \$100,000).	Indefinite and for multiple entries.	US\$ 375
Temporary work visa	For foreigners who are employed by a company, public or private body or institution, or individual, and who wish to enter or stay in the country to work or carry out an activity in their area of specialization: <ul style="list-style-type: none"> • Managers, technical and administrative staff of a foreign public or private body, of a commercial or industrial nature, transferred from abroad to fill specific posts in their companies; • The visa will be issued at the request of and under the responsibility of the company, body or individual sponsoring the application. 	Multiple entries for two years.	US\$ 205

51. Decree No. 4000 of 2004 includes the following provisions pertaining to the obtention of a temporary work visa:

“Article 30. Temporary work visas may be issued by the internal working group established by the Ministry of Foreign Affairs or the consular offices of the Republic in the following cases:

“30.1 Foreigners employed by a public or private enterprise, body or institution, or by an individual, who wish to enter or stay in the country to work, carry out an activity in their area of specialization or to provide technical training.

“30.2 Foreigners who wish to enter or stay in the country by virtue of academic agreements between higher educational institutions or inter-administrative agreements in specialized areas. Such persons should prove their suitability by presenting their duly validated qualifications or their employment certificates if they are not professionals.

“30.3 Foreign journalists hired by national or international news or information agencies or who have correspondent status, which should be duly accredited.

“30.4 Foreigners who are members of artistic, sporting or cultural groups hired for their activity, if it is remunerated.

“30.5 Foreigners appointed by a State body or entity.

“30.6 Managers or technical or administrative staff of a foreign public or private body of a commercial or industrial nature, transferred from abroad to fill specific posts in their enterprises.

“30.7 Volunteers and missionaries who are not part of the hierarchy of a church, faith, religious denomination, federation, confederation or association of ministers of religion.

“30.8 Foreigners who, without being employed by any enterprise domiciled in Colombia, provide their services in the development of specific projects at the request of enterprises domiciled in the national territory.”

2. Articles 9 and 10 of the Convention

52. Articles 9 and 10 of the Convention refer to the right to life and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. The Constitution of Colombia guarantees those rights in articles 11 and 12, as follows:

“*Article 11.* The right to life is inviolable. There shall be no death penalty.”

“*Article 12.* No one shall be subjected to enforced disappearance, torture or cruel, inhuman, or degrading treatment or punishment.”

3. Article 11 of the Convention

53. Article 11 of the Convention refers to the prohibition of slavery and servitude. Article 17 of the Constitution of Colombia provides as follows:

“Slavery, servitude and the slave trade in all forms are prohibited.”

4. Articles 12, 13 and 26 of the Convention

54. Articles 12, 13 and 26 of the Convention refer to freedom of expression, freedom of thought, conscience and religion and the right to join freely any trade union. These rights are guaranteed in articles 19, 20 and 39 of the Constitution of Colombia:

“*Article 19.* Freedom of worship is guaranteed. Every individual has the right freely to profess his or her religion and to propagate it individually or collectively. All religions and churches are equally free before the law.”

“*Article 20.* Every person is guaranteed the freedom to express and propagate his or her thoughts and opinions, to transmit and receive true and impartial information, and to establish mass media.

“The mass media are free and bear a social responsibility. The right of correction, under equitable conditions, is guaranteed. There shall be no censorship.”

“*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.”

5. Articles 14 and 15 of the Convention

55. The prohibition of arbitrary or unlawful interference with private life, family, home, correspondence or other communications, and the prohibition of the arbitrary deprivation of property are laid down in articles 14 and 15 of the Convention. Article 15 of the Colombian Constitution protects the right to privacy:

“*Article 15.* All persons are entitled to their personal and family privacy and to their good name, and the State shall respect them and ensure that they are respected. They are also entitled to know of, update and rectify any information about them contained in databanks and in the records of public and private bodies.

“Freedom and other guarantees contained in the Constitution shall be respected in the collection, processing and circulation of data.

“Correspondence and other forms of private communication are inviolable. They may be intercepted or recorded only pursuant to a court order, in the cases and in accordance with the formalities established by law.

“...

“For tax or legal purposes and for cases of inspection, supervision and intervention, the State may require the submission of accounting ledgers and other private documents, under the conditions specified by law.”

6. Articles 16 (paras. 1-4), 17 and 24 of the Convention

56. The right to liberty and security of the person referred to in paragraphs 1 to 4 of article 16, and protection against arbitrary detention or imprisonment and recognition as a person before the law contained in articles 17 and 24 of the Convention are recognized in articles 13 and 14 of the Colombian Constitution:

“Article 13. All persons are born free and equal before the law, shall be given equal protection and treatment by the authorities and shall enjoy the same rights, freedoms and opportunities without any discrimination on grounds of sex, race, national or family origin, language, religion, political opinion or philosophy.

“The State shall take steps to ensure that equality is real and effective and shall adopt measures in support of groups that are discriminated against or marginalized.

“The State shall especially protect those individuals who, on account of their economic, physical or mental condition, find themselves in patently vulnerable circumstances, and shall sanction any abuse or ill-treatment perpetrated against them.”

“Article 14. Everyone shall have the right to recognition as a person before the law.”

57. It is important to note that the National Prison System Institute (INPEC) has taken the necessary measures to strengthen the recognition of the inalienable rights of persons deprived of liberty. In carrying out their prison functions, the administrative personnel and the Guard Unit respect the provisions relating to the human rights of persons deprived of liberty laid down in the international treaties, the Constitution and the law. INPEC has a Citizens’ Assistance Office and a Human Rights Group of the INPEC Directorate-General, which assess and address the needs of the convicts in the 139 prison establishments.

58. The action taken by the officials of the aforementioned offices in fulfilling their duty to protect and guarantee the human rights of the prisoners, involves State supervisory bodies such as the Office of the Ombudsman and the Office of the Procurator-General, whose assistance and support facilitate follow-up on and the evaluation of the different requirements of the prison population. This helps to ensure that the preventive and corrective actions that are taken reflect the goal of achieving excellent prison practices and are consistent with the mandate and responsibility of Colombia with regard to the respect for and protection and guarantee of the fundamental rights of persons deprived of their liberty.

59. It should be noted, however, that no complaints against INPEC have been submitted by foreigners for arbitrary detention or imprisonment. There are no specific places for imprisoning foreigners who have been placed in pretrial detention by a judge or who have been sentenced by a judicial decision to imprisonment. INPEC determines prisoners’ profiles and the stage of their treatment in order to place them in an establishment that is in keeping with their legal situation.

60. To date, there are no records of any detained migrant workers. In any case, in Colombia national and foreign detainees are treated in the same way: they are informed of their rights and, in particular, of their legal situation; if they do not speak Spanish, interpreters are used to communicate to them the relevant information in their mother tongue or in another language that they understand. Furthermore, INPEC has the support of the consulates and embassies in Colombia, which assist the prison management in dealing with this type of situation.

61. To date, there have been no cases of minors, children of migrant workers, being involved in legal proceedings in INPEC. With regard to whether there is any special legislation to protect

them, it should be mentioned that, on 5 November 2006, the new Children's Act was adopted in Colombia and that its content is consistent with the doctrine of comprehensive protection provided for in the Convention on the Rights of the Child of 1989.

7. Articles 16 (paras. 5-9), 18, 19 and 20 of the Convention

62. The procedural guarantees contained in paragraphs 5 to 9 of article 16 and article 20 of the Convention, which prohibit the imprisonment, deprivation of authorization of residence and/or work permit and expulsion from the country simply for not fulfilling a contractual obligation, are protected in Colombia under articles 28 to 34 of the Constitution:

“Article 28. All persons are free. No one may be subjected to interference with his or her person or his or her family, to arrest, detention or imprisonment or to have his or her home searched, except in accordance with a written order from the competent legal authority, in due form and for reasons previously defined by law.

“A person in pretrial detention shall be placed at the disposal of the competent judge within 36 hours so that the latter may take an appropriate decision within the time limit established by law. In no case may there be arrest, detention or imprisonment for debts, or penalties or security measures that are not subject to the statute of limitations.”

“Article 29. Due process shall apply in all legal and administrative proceedings.

“No one may be tried except in conformity with the laws that predate the act of which the person is accused, before a competent court or tribunal and in accordance with the procedure appropriate to each case.

“In criminal matters, permissive or favourable laws, even if they postdate the act, shall be applied in preference to restrictive or unfavourable laws.

“Everyone is presumed innocent until proven guilty according to law. Anyone who is accused is entitled to the right of defence and to the assistance of counsel of his or her own choosing or assigned by the court during the investigation and trial; to a fair and public hearing without undue delay; to submit evidence and to examine witnesses for the prosecution; to challenge a conviction; and not to be tried twice for the same act.

“Evidence obtained in violation of due process is null and void as of right.”

“Article 30. Anyone who is deprived of his or her liberty and believes it to be unlawful is entitled to apply at any time to any judicial authority for habeas corpus on his or her own or through a third party, and the judicial authority shall decide within 36 hours on the lawfulness of the detention.”

“Article 31. Any conviction may be appealed or reviewed, except where provided by law.

“When the accused is the sole appellant, the higher court may not impose a heavier penalty.”

“*Article 32.* An offender who is caught in flagrante delicto may be apprehended and taken before a judge by any person. Should he or she be pursued by law enforcement officials and take refuge in his or her own home, the law enforcement officials may enter the domicile to apprehend the offender; should he or she seek shelter in someone else’s home, a request must be made to the resident before entering.”

“*Article 33.* No one may be forced to testify against himself or herself, or his or her spouse, permanent companion or kin to the fourth level of consanguinity, affinity two ranks removed or one rank removed in civil law.”

“*Article 34.* Deportation, life imprisonment and confiscation of property shall be prohibited.

“Nevertheless, a judicial ruling may nullify ownership of property acquired by unlawful enrichment, at the expense of the Public Treasury or to the serious detriment of social morality.”

63. The guarantee of the right to due process⁹ applies to the above situation. No one may be expelled from the national territory without proceedings in which he or she has the possibility to defend himself or herself. Moreover, the rights of workers who have been unjustly expelled can be restored, not only under article 90 of the Constitution, but also by virtue of the whole body of law and case law, which holds that the State is liable for acts that are subsequently annulled or revoked.

8. Articles 21, 22 and 23 of the Convention

64. With regard to articles 21 to 23 of the Convention concerning the protection against confiscation and/or the destruction of identity and other documents, protection against collective expulsion and the right to have recourse to the protection and assistance of the consular and diplomatic authorities, article 6 of the Constitution of Colombia establishes that public officials may do only as the law allows; therefore, only persons authorized by law may retain the documents of immigrants for legal reasons.

65. Colombia is party to the Vienna Convention on Consular Relations of 1963, article 5 (j) of which establishes the obligation for States parties to transmit “judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State”.

9. Articles 25, 27 and 28 of the Convention

66. 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,

⁹ Article 29 of the Constitution of Colombia.

Colombia, as a country that respects the principles contained in its Constitution and in international instruments to which it is party, protects on an equal basis all the rights and guarantees of all workers, without any discrimination, in accordance with the provisions of 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.

“*Article 25.* Work is a right and a social obligation and in all its forms enjoys the special protection of the State. Every person is entitled to a job under dignified and equitable conditions.”

“*Article 26.* Every person is free to choose a profession or occupation. The law may require certificates of competence. The competent authorities shall inspect and supervise the exercise of the professions. Occupations, trades and work that do not require academic training are to be freely exercised, except for those that involve a risk to society.

“Legally recognized professions may be organized into professional associations. The internal structure and operation of the latter must be democratic.

“The law may assign public functions to them and establish the appropriate controls.”

“*Article 27.* The State guarantees freedom of teaching at the primary and secondary level, training, research, and professorship.”

67. 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.”

68. 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.”¹⁰

¹⁰ Judgement No. C-040 of 1993 of the Constitutional Court of Colombia.

69. The grounds for deportation and expulsion, set forth in Decree No. 4000 of 30 November 2004, chapters II (Deportation) and III (Expulsion), are as follows:

“Chapter II. Grounds for deportation

“*Article 101.* The Director of the Administrative Department of Security or his or her representatives may, by means of a reasoned decision, order the deportation of aliens on any of the grounds established in the following article of the present Decree. An appeal may be lodged against such an administrative act through government channels. No appeal may be lodged against a decision ordering deportation as a consequence of the cancellation of a visa by the Ministry of Foreign Affairs.

“*Article 102.* Without prejudice to any criminal penalties that may ensue, aliens shall be deported from the national territory on any of the following grounds:

“102.1 Entering or leaving the country without complying with the regulations governing such matters, provided that there are no special circumstances warranting a fine.

“102.2 Failing to pay the financial penalty imposed by the Administrative Department of Security, or when more than two months have elapsed since the enforcement of the penalty without payment of any instalment.

“102.3 Being an illegal resident in the meaning of the present Decree, provided that there are no special circumstances warranting a financial penalty.

“102.4 Obtaining a visa by fraud or deceit, making a false statement when applying for a visa or carrying out administrative procedures prescribed by the migration authorities, as well as submitting documents that mislead the Ministry of Foreign Affairs or the migration authority for the purposes of entry, departure, control and registration.

“102.5 Failing to change their visa or not applying for one when they are obliged to do so.

“102.6 Engaging in an activity that is not authorized in their entry permit.

“102.7 Meeting any of the grounds for non-admission or rejection.

“102.8 Being the subject of constant complaints, causing them to be declared *persona non grata* in the interests of social harmony or public peace.

“102.9 Failing to leave the country within 30 calendar days following notification of the order cancelling the visa.

“102.10 Failing to meet financial obligations to any natural or legal person by refusing to pay.

“102.11 Having been fined twice or more within the same calendar year by the same public body.”

“*Article 103.* Aliens who have been deported may enter Colombian territory only after the expiry of the time period for the sanction prescribed in the relevant decision, which must be not less than 6 and not more than 10 years, subject to the issuing of a visa by the consular offices of Colombia.

“Chapter III. Grounds for expulsion

“*Article 104.* The Director of the Administrative Department of Security or his or her representatives, without prejudice to any criminal penalties that may ensue, may, by means of a reasoned decision, order the expulsion of aliens from the national territory on any of the following grounds:

“104.1 Failing to comply with the deportation decision within the time limit specified in the safe conduct pass to leave the country, or returning to the country before the expiry of the ban imposed therein or without the appropriate visa.

“104.2 Filing reports or notes in the records of the competent authorities to facilitate the entry of aliens on false promises of a contract, visa or entry or residence documents.

“104.3 Having been sentenced in Colombia to a term of imprisonment, which does not include expulsion from Colombian territory as an accessory penalty.

“104.4 Having false identity documents as a Colombian national or national of another country.

“An appeal may be lodged against the administrative act ordering expulsion through government channels, with suspensive effect.”

“*Article 105.* Notwithstanding the provisions of the preceding article, the Director of the Administrative Department of Security or his or her representatives may expel aliens who in the opinion of the migration authority are engaging in activities that jeopardize national security, public order, public health, public peace or public security, or when there is intelligence information indicating that they represent a threat to national security, public order, public security or public peace or when the Colombian State has been informed by a foreign authority that a conviction has been handed down or an arrest warrant has been issued for the persons in that country for ordinary offences, or that such persons are listed by Interpol.

“When the extradition of an alien has been requested by their country of origin and he or she expresses willingness to appear before the authorities of that country, the expulsion and surrender to the authority of the requesting State may proceed, subject to the approval of the Government, for which purpose the Attorney General may suspend the arrest warrant for extradition or order the release of the person whose extradition is requested.”

“*Article 106.* When the expulsion is ordered as an accessory penalty by means of an enforceable sentence, once the main penalty has been served, the Director of the Administrative Department of Security or his or her representatives shall give effect to the

expulsion of the alien concerned and notify the internal working group specified by the Ministry of Foreign Affairs and the judicial agency that issued the expulsion order. No appeal may be lodged against this administrative act.”

“*Article 107.* The alien being expelled may return to the country only with a visa issued by the consular offices of Colombia after the expiry of a period of not less than five years.

“When the expulsion is being ordered for a period of more than 10 years, the Director of the Administrative Department of Security or the Assistant Director of Alien Affairs must be consulted.”

“*Article 109.* Aliens may be escorted at any time by the migration authority to the offices of the Administrative Department of Security when it is necessary to check their identity and/or residence status in the national territory or when administrative proceedings are being taken against them and this is requested by the Department.

“Aliens who are subject to deportation or expulsion procedures may be held in preventive detention for up to 36 hours and/or placed under surveillance or held in custody by the migration authorities until the measure in question becomes effective.

“*Article 110.* The failure of an alien to report to the offices of the Administrative Department of Security shall not prevent the normal course of deportation or expulsion procedures.”

“*Article 111.* The Colombian migration authorities may surrender the aliens subject to non-admission, deportation or expulsion procedures to the authorities of their country of nationality, the country from which they entered Colombia or the host country or requesting State.”

“*Article 112.* Deportation or expulsion results in the cancellation of the relevant visa. No appeal may be lodged against the cancellation of the visa.”

“*Article 113.* It shall be understood that aliens have served their deportation and/or expulsion penalty when they have remained outside the national territory for the period stipulated in the administrative decision.”

70. With regard to entitlements to social security, it should be noted that, in accordance with the provisions of Act No. 100 of 1993, the comprehensive social security system is a compulsory public service whose purpose is to guarantee irrevocable individual and collective rights to a quality of life that is consistent with human dignity by protecting against any possible adverse situations. To this end, all persons shall be members of the basic public health service provided by the general social security system for health, as members of the contributive regime, subsidized regime or, temporarily, as associate members.

71. Similarly, and in accordance with article 15 of Act No. 100 of 1993, amended by article 3 of Act No. 797 of 2003, it is compulsory for the following to be members of the general pensions system: all persons bound by employment contracts or as public servants, natural persons who

directly provide services to the State or private enterprises through contracts for the provision of services or any other type of services they use. The Constitution deals with this in greater detail in articles 48 and 49:

“Article 48. Social security is a compulsory public service that shall be delivered under the administration, coordination and control of the State, subject to the principles of efficiency, universality and cooperation, within the limits established by law.

“The entire population is guaranteed the irrevocable right to social security.

“With the participation of individuals, the State shall gradually extend social security coverage to include the provision of services in the form determined by law.

“Social security may be provided by public or private entities, in accordance with the law.

“It shall not be possible to allocate or use the resources of the social security institutions for other purposes.

“The law shall define the methods whereby the resources allocated to retirement benefits maintain their purchasing power.”

“Article 49. Public health and sanitation are public services for which the State is responsible. All individuals are guaranteed access to services that promote, protect, and rehabilitate public health.

“It is the responsibility of the State to organize, direct and regulate the delivery of health services and of sanitation for the population in accordance with the principles of efficiency, universality and cooperation, and to establish policies for the provision of health services by private entities and to exercise supervision and control over them. In the area of public health, the State shall establish the jurisdiction of the nation, territorial entities and individuals, and determine the shares of their responsibilities in accordance with the terms and conditions determined by law.

“Public health services shall be organized in a decentralized manner, in accordance with levels of responsibility and with the participation of the community.

“The law shall specify the terms under which basic care for all inhabitants shall be free of charge and compulsory.

“Every person has the obligation to ensure the comprehensive care of his or her health and that of his or her community.”

10. Articles 29, 30 and 31 of the Convention

72. Articles 29, 30 and 31 of the Convention deal with the rights of the children of migrant workers to a name, to registration of birth and to a nationality, to access to education on the basis of equality of treatment, and also with respect for the cultural identity of migrant workers and members of their families. The Constitution raises the rights of the child to the category of fundamental rights, with education as one of the principal rights. The Constitutional Court has referred to equal opportunities in education as:

“... an antidote to arbitrariness, discrimination and ignorance of the relative disadvantages of people who find themselves in circumstances of manifest weakness”.¹¹

73. In August 2006, Congress approved the new Children and Adolescents Act in accordance with the doctrine of comprehensive protection laid down in the Convention on the Rights of the Child.

74. With regard to cultural identity, this right is contained in article 70 of the Constitution:

“The State recognizes the equality and dignity of all those who live in the country. The State shall promote ... the dissemination of the nation’s cultural values.”

11. Articles 32 and 33 of the Convention

75. With regard to the right to the transfer of earnings and savings and personal effects, referred to in articles 32 and 33 of the Convention, articles 58 to 64 of the Constitution require respect for various kinds of property. Nevertheless, it is important to bear in mind that this right includes a social and ecological aspect, which gives rise to obligations for property owners. The prohibition against the arbitrary expropriation of property from migrant workers does not prevent Colombia from expropriation on the grounds of equality, in accordance with the last paragraph of article 58 of the Constitution; otherwise, this would constitute unjustified discrimination in favour of foreign workers to the detriment of the principle of equality.

76. There are currently two decrees in force on this matter: Decree No. 2057 of 1987 and Decree No. 742 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 such as furniture, domestic appliances and fittings are liable to 15 per cent ad valorem duty; this amount is less than it would cost to import any of these goods.

77. When signing the Convention, Colombia made a reservation, whereby it 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 nationals in respect of the import and export of personal and household effects and the transfer of earnings and savings abroad. In this connection, the aforementioned decrees are consistent with the reservation, which is also in keeping with the object and purpose of the Convention.

78. Similarly, the laws and regulations currently in force in Colombia guarantee the right of migrant workers to transfer their incomes and savings, but does not establish preferential treatment.

¹¹ Judgement of the Constitutional Court of Colombia T-450 of 1993.

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

1. Article 37 of the Convention

79. The right to information concerning conditions for admission to the State of employment and remuneration is contained in article 37 of the Convention. The embassies of Colombia abroad provide this service, which can also be found on the Internet on the official page of the Colombian Ministry of Foreign Affairs. In Colombia, articles 23 and 74 of the Constitution provide for the protection of the right to information: “Everyone has the right to access public documents except where provided otherwise by law. Professional secrets are inviolable.”

2. Articles 38 and 39 of the Convention

80. The right to liberty of movement and freedom to choose one’s residence, which are recognized in articles 38, 39 and 49 of the Convention, specifically with regard to the right to be temporarily absent without effect upon authorization to stay or to work in the country, as well as the right to liberty of movement and freedom to choose one’s residence, are also recognized in articles 100 and 24 of the Colombian Constitution and in Decree No. 4000 of 2004:

“*Article 100.* Aliens in Colombia shall enjoy the same civil rights as Colombian citizens. Nevertheless, for reasons of public order, the law may impose special conditions on or nullify the exercise of specific civil rights by aliens. Similarly, aliens shall enjoy, in the territory of the Republic, guarantees granted to citizens, except for the limitations established by the Constitution or by law.

“Political rights are reserved for citizens, but the law may grant aliens resident in Colombia the right to vote in municipal or district elections and referendums.”

“*Article 24.* 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.”

3. Articles 40, 41 and 42 of the Convention

81. Political rights, such as the right to form associations and trade unions, the right to participate in public affairs of one’s State of origin and the right to vote and be elected in elections held in Colombia, as provided in articles 40 to 42 of the Convention, are covered by articles 39, 40 and 100 (the latter article is cited in paragraph 80, above) 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.”

“*Article 40.* Every citizen has the right to participate in the establishment, exercise and control of political power. In order to exercise this right, citizens may:

- “1. Vote and be elected;
- “2. Take part in elections, plebiscites, referendums, popular consultations and other forms of democratic participation;
- “3. Form political parties, movements or groups without any restriction whatever; freely participate in them and disseminate their ideas and programmes;
- “4. Revoke the mandates of elected officials in cases, and in the form, established by the Constitution and the law;
- “5. Act in public bodies;
- “6. Exercise the public right of action in defence of the Constitution and the law;
- “7. Hold public office, with the exception of Colombian citizens, native-born or naturalized, who hold dual citizenship. The law shall establish regulations concerning this exception and determine the cases in which it applies. The authorities shall guarantee the adequate and effective participation of women at the decision-making levels of the public administration.”

82. Act No. 1070 of 3 July 2006 governs the right of aliens resident in Colombia to vote. This right is referred to in article 100 of the Constitution. In accordance with the Act, aliens resident in Colombia may vote only in municipal or district elections and referendums, from the last place where they established their domicile. Similarly, the elections in which aliens resident in Colombia may participate are: elections for district or municipal mayor, district or municipal councils and local district or municipal, administrative boards throughout national territory. Municipal and district referendums are governed by Act No. 134, Title V, of 1994.

83. Once they have reached the age of 18, aliens resident in Colombia are entitled to vote; for this they must have a resident’s visa and be registered with the National Civil Registry, in accordance with the provisions of the law relating to the registration of identity cards for Colombian nationals, presenting the alien’s identity card that verifies their status as Colombian residents. The National Civil Registry must register aliens resident in Colombia in lists separate from those of nationals, with a view to having unified national information and to preparing the

respective electoral list. Aliens who wish to exercise their right to vote must have at least five continuous and uninterrupted years of residence in Colombia and not be subject to any constitutional or legal disqualifying factors.

84. With regard to access to public posts by aliens residing in Colombia who have not yet acquired Colombian nationality, the Chamber of Consultancy of the Council of State issued Judgement No. 1739 of 4 May 2006, in which it states that “although, in principle, the exercise of public functions and posts is reserved for Colombian nationals, when the Constitution or the law does not make the requirement that a certain public post be filled by a Colombian national, aliens resident in Colombia who have not acquired Colombian nationality may participate in competitions for public posts classified as career posts and acquire the rights to this”.

4. Articles 43, 54 and 55 of the Convention

85. The principle of equality of treatment with Colombian nationals in relation to labour protection, unemployment benefits, access to new employment, remuneration and avoidance of expulsion owing to the termination of the labour contract, as well as the right to choose one’s remunerated activity, is dealt with in articles 43, 49, 51, 52 and 54 to 56 of the Convention and is covered by articles 13, 25 and 26 of the Constitution.

5. Articles 44 and 50 of the Convention

86. 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, provided for in articles 44 and 50 of the Convention, is also dealt with in articles 5, 13 (already cited) and 42 of the Constitution. However, it is important to note that, in Colombia, there are non-formal associations for groups of foreigners, specifically Koreans, Ecuadorians, Jamaicans and Arabs, etc.

“*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. The law may determine the inalienable and non-seizable nature of family assets.

“The family’s honour, dignity and privacy are inviolable.

“Family relations are based on equality or rights and duties of the couple and on mutual respect among all family members.

“Any form of violence in the family is considered destructive of its harmony and unity and shall be punished in accordance with the law.

“Children born within or outside wedlock, adopted or conceived naturally or with scientific assistance have equal rights and duties.

“The law shall establish regulations concerning parental responsibility.

“The couple have the right freely and responsibly to decide the number of their children and shall be required to support them and bring them up while they are underage or disabled.

“The forms of marriage, the age and capacity to enter into marriage, the rights and duties of the spouses, their separation and dissolution of marriage shall be governed by civil law.

“Religious marriages shall have civil effects in the conditions established by law.

“The civil effects of any marriage shall cease through divorce in accordance with civil law.

“Decrees of annulment of religious marriages issued by the authorities of the faith in question shall also have civil effects in the conditions established by law.

“The law shall determine matters relating to the civil status of persons and the consequent rights and duties.”

87. 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 Administrative Department of Security and must request the proportionality ratio from the Ministry of Social Welfare with respect to the occupation and enterprises chosen. This is because the law grants only one authorization that protects the residence and work of the person entering the country.

88. Article 90 of the Colombian Constitution deals with the right to an effective remedy for violation of the rights or freedoms recognized in the Convention, notwithstanding that the violation has been committed by persons acting in an official capacity. This article of the Constitution provides that:

“The State shall answer materially for any type of damages that can be attributed to an illegal action or caused by deeds of commission or omission by the public authorities.”

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

89. The categories of migrant workers listed in article 2 of the Convention are the following: migrant worker, frontier worker, seasonal worker, seafarer, worker on an offshore installation, itinerant worker, project-tied worker, specified-employment worker and self-employed worker. For these categories of migrant employment in Colombia, the following types of visas are issued, in accordance with Decree No. 4000 of 2004.

90. **Crewmember’s visa.** Without prejudice to the provisions of international treaties currently in force and to which Colombia is a party, a crewmember’s visa can be granted to a foreign crewmember or member of an international means of transport or fishing vessel that enters the

national territory. The validity of the crewmember's visa will be terminated for failure to comply with the norms in force concerning proportionality between national and foreign crewmembers, when the Ministry of Foreign Affairs has been informed accordingly by the competent authority. A foreigner who is a crewmember of a foreign vessel who requests permission to remain in Colombian territory for a period of less than 60 days to carry out repairs is issued a temporary visitor's permit by the Administrative Department of Security. If the crewmember needs to remain in Colombia for a period equal to or longer than 60 days, he must comply with the procedure for obtaining the relevant visa. The crewmember's stay is authorized for the length of time that the means of transport in question remains in the national territory. In the case of fishing activities, the foreign crewmember's stay is authorized in accordance with the provisions of the fishing permit or the articles of agreement. In any case, the validity of this visa may not exceed one year; the visa entitles the bearer to multiple entries.

91. The **temporary work visa** is issued in the following cases:

- (a) To foreigners employed by a public or private enterprise, body or institution, or by an individual, who wish to enter or stay in the country to work or carry out an activity in their area of specialization or to provide technical training;
- (b) To foreigners who wish to enter or stay in the country by virtue of academic agreements between higher educational institutions or inter-administrative agreements in specialized areas. Such persons should prove their suitability by presenting their duly validated qualifications or their employment certificates if they are not professionals;
- (c) To foreign journalists hired by national or international news or information agencies, or who have correspondent status, which should be duly accredited;
- (d) To foreigners who are members of artistic, sporting or cultural groups and hired for their activity, if it is remunerated;
- (e) To foreigners appointed by a State body or entity;
- (f) To managers or technical or administrative staff of a foreign public or private body of a commercial or industrial nature, transferred from abroad to Colombia to fill specific posts in their enterprises;
- (g) To volunteers and missionaries who are not part of the hierarchy of a church, faith, religious denomination, federation, confederation or association of ministers of religion;
- (h) To foreigners who, without being employed by any enterprise domiciled in Colombia, provide their services in the development of specific projects at the request of enterprises domiciled in the national territory.

92. The temporary work visa is issued at the request and under the responsibility of the enterprise, body, institution or natural person who guarantees the application, and may be granted for a period of up to two years, for multiple entries, except for the visa referred to in paragraph 30.4 of Decree No. 4000 of 2004, which shall be granted for six months.

93. The holder of a **temporary visa for a spouse or partner of a Colombian national**; father or mother a Colombian national, refugee or asylum-seeker, and resident, may change employer, entity or occupation, without having to apply for a new visa.

94. Foreigners must exercise the profession, trade, activity or occupation indicated in their visa. In order to engage in the profession or activity authorized by the visa, foreigners must comply with the same requirements contained in the regulations in force for Colombian nationals, and furnish the documents that enable him to engage in the profession concerned. For professions or trades that are not regulated and in which a foreigner intends to engage in Colombia, the foreigner's experience or suitability must be demonstrated.

95. A foreigner may exercise, within Colombian territory, more than one profession, trade or occupation when he or she is duly authorized to do so by the relevant visa. A foreigner who, with authorization from the internal working group specified by the Ministry of Foreign Affairs, changes employer, company or occupation must appear in person before the Administrative Department of Security to register the change, within 15 calendar days following authorization of the change.

96. A foreigner may request the transfer of the visa owing to wear and tear, change or loss of the passport, or when any clarification or change of company, employer or occupation is necessary, provided that he or she meets the indicated requirements. If the foreigner has obtained a visa, he or she must observe the restrictions imposed by national legislation regarding settlement in certain areas of the national territory or the exercise of certain activities.

97. Decree No. 4000 of 2004 allows the Ministry of Foreign Affairs to consider the mechanism for applying for a visa by registered mail, in accordance with the established procedure. The Ministry may also, if it deems appropriate, establish special brigades to identify the main areas and cities where foreigners are settled in the country. The Government of Colombia may, for convenience, at any time order the regularization of the status of foreigners.

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

1. The National Intersectoral Migration Committee

98. The promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families is coordinated by the National Intersectoral Migration Committee.¹² 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

¹² Established by Decree-Law No. 1239 of 19 May 2003.

their families, and their resettlement and cultural integration; as well as 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, are included in the set of policies carried out by the Committee.

99. The National Intersectoral Migration Committee 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 Committee 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 Committee also includes the Director of Consular Affairs and Colombian Communities Abroad, the Minister of the Interior and Justice, the Minister of National Defence, the Minister of Social Welfare, the Minister of Trade, Industry and Tourism, the Director of the Colombian Institute for Student Loans and Study Abroad, the Director-General of the National Planning Department, the Director of the Administrative Department of Security, the Director of the Colombian Institute for the Promotion of Higher Education, or the persons delegated to fulfil this responsibility.

100. The functions of the Committee are:

(a) To propose guidelines for determining and coordinating migration policy and to coordinate studies relating to social, demographic, economic, scientific, cultural, security, public order and health needs that may affect national migration policy;

(b) 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;

(c) To study and propose areas of the national territory for priority development, which would make it possible to authorize the entry of foreigners with certain specialities;

(d) To make recommendations concerning the proportionality of foreign workers in Colombia;

(e) To inform Colombians living abroad of their rights to protection and social security.

2. Measures to prevent irregular migration and trafficking in persons

101. With regard to measures to prevent and eliminate movements and the illegal or clandestine employment of migrant workers in an irregular situation, Colombia is no stranger to the fight against trafficking in persons, a worldwide problem that affects the poorest strata in developing countries. Decision No. 116 of the Commission of the Andean Community of Nations, and its adoption as a domestic norm in Decree No. 309 of 1978, is clear proof of this interest.

102. According to the Administrative Department of Security, from 2000 to 2006, over 3,000 foreigners were arrested with false documents; most of these persons had criminal records in their countries of origin. More than half of these 3,000 foreigners in an irregular migratory situation were deported. The lack of economic resources prevented the continuation of this process. The Congress of Colombia is currently considering a bill that would punish this offence with penalties of between four and eight years' imprisonment without benefit of parole.

103. Over the past 10 years, Colombia has carried out two processes of regularization of foreigners in an irregular situation, which could have benefited migrant workers who wished to reside in the country. In this regard, it is important to point out that the number of foreigners in general and of those who reside in the country for reasons of employment is very small and the total foreign population could be less than 0.2 per cent of the population of Colombia.

104. Lastly, with regard to the repatriation of the bodies of deceased migrant workers or members of their families, and compensation relating to the death of a migrant worker or a member of his or her family, most labour agreements include this right. Likewise, the Diplomatic and Consular Guide of the Ministry of Foreign Affairs includes the necessary instructions for carrying out this procedure, in which attention is paid to the special characteristics of each case.

III. CONCLUSIONS

105. In general, the number of migrant workers is less than 0.03 per cent of Colombia's total population; nevertheless, Colombia respects the rights recognized in the Convention and, in this regard, its domestic legislation guarantees everyone the rights contained in international legislation that apply to migrant workers and members of their families.

106. There have been no complaints from migrant workers holding visas issued by the Ministry of Foreign Affairs concerning abuse or ill-treatment by their employers. Nor have State institutions received any complaints of the violation of the rights of members of migrant workers' families.

107. Colombia is a country with high levels of emigration, and a very large number of those who emigrate are migrant workers in developed or highly industrialized high-income countries. Unfortunately, these countries of destination have not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In this regard, a document concerning the situation of Colombian nationals who have emigrated from the country, and their considerable impact on Colombia's economic life, is contained in the annex.

Annex

COLOMBIAN EMIGRATION

1. The census conducted in Colombia in 2005 and 2006 estimated the number of Colombians living abroad at 3,337,107.¹³ The census also found that 69 per cent of households in Colombia have experienced international migration and that, in addition to the capital of the Republic, the departments with the highest indicators are Valle de Cauca (24.1 per cent), Bogotá (18.7 per cent), Antioquia (11.9 per cent), Risaralda (7.8 per cent) and Atlántico (6.6 per cent).
2. Broken down by department, migration experience is as follows:

Intensity of migration experience

Department	Distribution households (%)	Distribution households with migration experience (%)	Indicator of relative migration experience
Risaralda	2.17	7.77	3.59
Valle del Cauca	10.13	21.14	2.38
Quindío	1.35	2.97	2.21
Putumayo	0.63	1.20	1.92
Atlántico	4.5	6.6	1.48
San Andrés	0.2	0.2	1.29
Caldas	2.30	2.61	1.13
Bolívar	3.81	4.01	1.05
Norte de Santander	2.76	2.84	1.03
Bogotá D.C.	18.5	18.7	1.01
Magdalena	2.35	2.21	0.94
Sucre	1.55	1.44	0.93
Antioquia	13.8	11.9	0.86
Santander	4.66	3.37	0.72
Cesar	1.87	1.05	0.56
Córdoba	2.97	1.45	0.49
Tolima	3.29	1.41	0.43
Cauca	2.66	1.07	0.40
Boyacá	3.03	1.14	0.38
Cundinamarca	5.66	2.03	0.36
Meta	1.75	0.63	0.36
Arauca	0.3	0.1	0.31
Nariño	3.27	0.62	0.19
Casanare	0.68	0.10	0.14
Huila	2.34	0.33	0.14
Caquetá	0.76	0.08	0.11
Intensity of migration experience: 1.48			
When the indicator is 1, the department's migration experience is equal to the national average.			

Source: DANE, Colombia. 2005 general census. Intensity of migration experience.

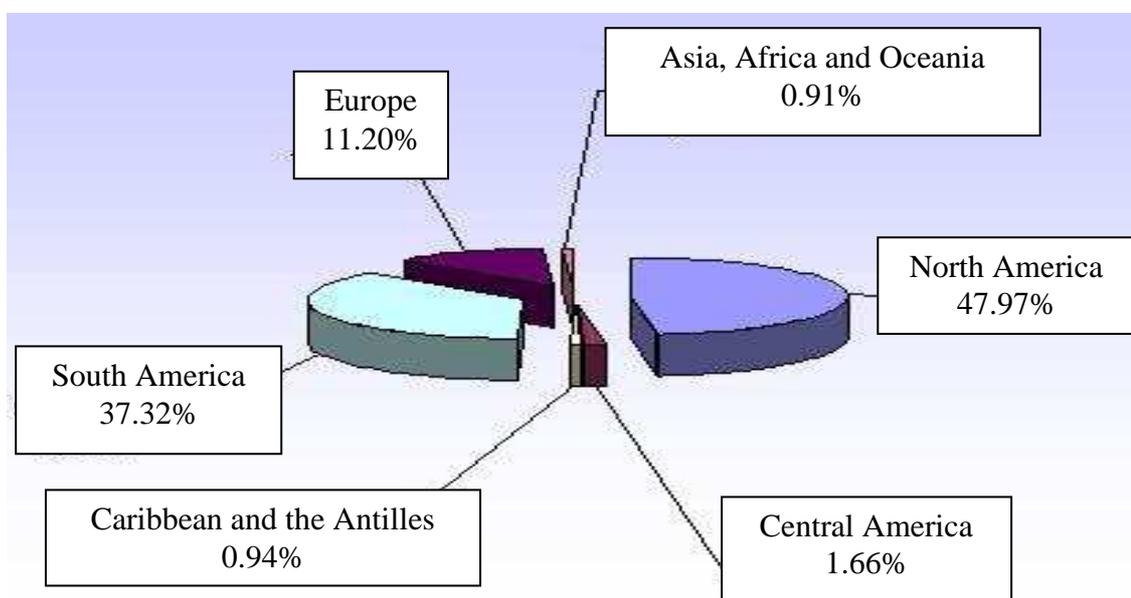
¹³ *Source:* DANE, 22 May 2006.

3. However, these figures contrast with the consulate registry of the Ministry of Foreign Affairs which, in December 2003, had registered some 768,722 persons in Colombian consulates abroad. The Ministry of Foreign Affairs estimated that, during that period, there were some 4,243,208 Colombians living outside the country.¹⁴ As the graphs show,¹⁵ of the total number of Colombians who decided to emigrate, 48 per cent emigrated to the United States and Canada, some 40 per cent to Latin America and the Caribbean, and about 11 per cent to Europe.

4. In South America, around 84 per cent are in Venezuela, 12 per cent in Ecuador, 1 per cent in Brazil and around 0.7 per cent in such countries as Peru, Bolivia and Argentina. It is estimated that some 475,253 Colombians live in Europe: 51 per cent in Spain, 19 per cent in the United Kingdom, 13 per cent in Italy and nearly 6 per cent in the Netherlands.

Graph 1

Estimated number of Colombians living abroad

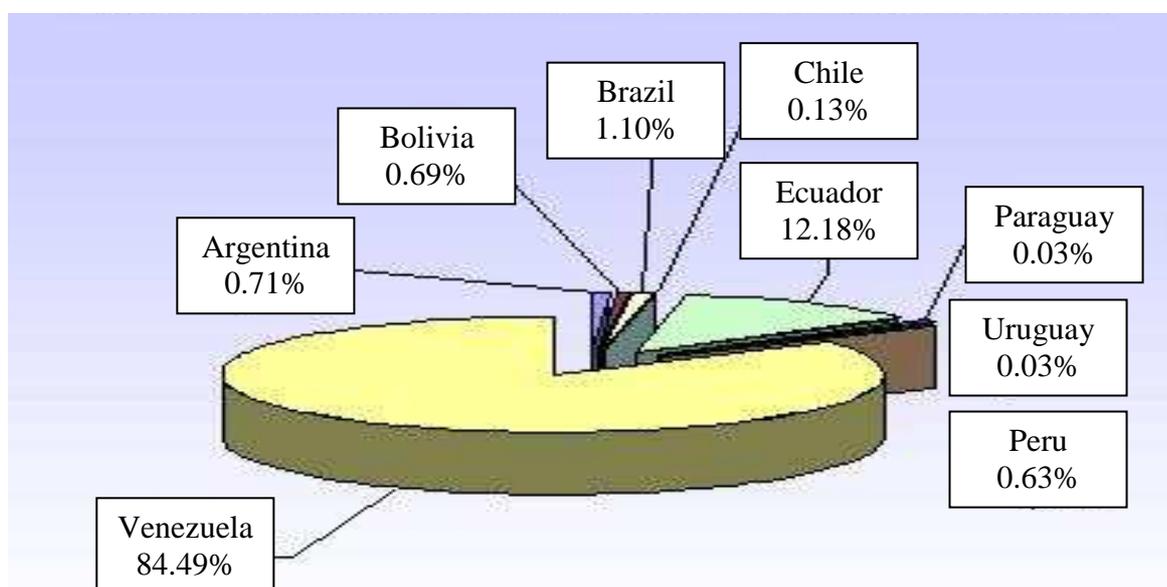


¹⁴ “Colombianos en el exterior, ¿cuántos son y dónde están?” In: www.colombianosune.com/.

¹⁵ Ibid. In: <http://www.colombianosune.com/colombianosune/>.

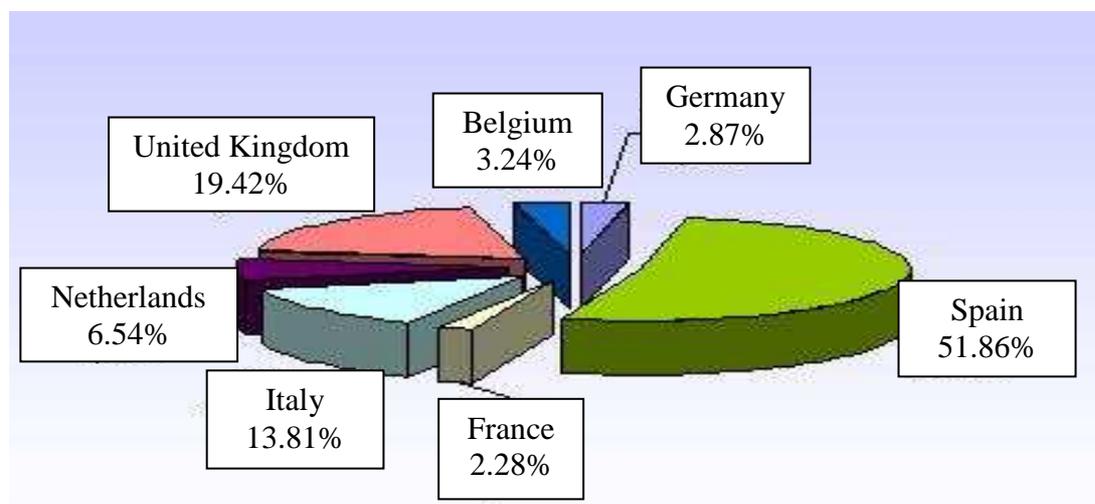
Graph 2

Estimated number of Colombians living in South America, by country



Graph 3

Estimated number of Colombians living in Europe, by country



5. In Central America and the Caribbean, where some 110,000 Colombians reside, the principal countries of destination are Panama, Mexico, the Dominican Republic, Costa Rica, Honduras, Aruba and Curaçao, which account for 92 per cent of the Colombians living in that region. Lastly, in Asia, Africa and Oceania, the principal countries of destination are Australia (38.9 per cent), Japan (31.1 per cent) and Israel (24.4 per cent).¹⁶ The following table presents migration flows of Colombians from 1998 to 2005.

¹⁶ See footnote 2, above.

Migration flows of Colombians, 1998-2005

Year	Exits	Entries	Balance
1998	1 093 147	933 564	159 583
1999	1 098 345	873 506	224 848
2000	1 234 775	952 459	282 316
2001	1 381 032	1 098 553	282 479
2002	1 277 210	1 141 656	135 554
2003	1 177 220	1 060 947	116 273
2004	1 405 174	1 246 621	158 553
2005	1 553 113	1 412 229	140 884
Total	10 220 025	8 719 535	1 500 490

Source: DANE, 2006.

6. This increase in the emigrant population has made the Ministry of Foreign Affairs aware of the need to strengthen consular assistance in legal and social matters and to inform Colombian nationals of their rights and obligations as emigrants. For this reason, it is promoting the establishment of thematic and geographical networks and putting forward initiatives that will enable them to become involved in the planning, development and even financing of social or productive programmes and projects for the country.

7. In this regard, the Ministry of Foreign Affairs has created the “Colombia Nos Une” (Colombia Unites Us) programme, an entity that hosts and participates in meetings concerning Colombian international migration and its impact. It has published documents containing reports presented at such meetings, as well as the conclusions of those reports, which contribute to the analysis of the phenomenon and decision-making on the problem.

8. The goal of the “Colombia Nos Une” programme is to strengthen ties with Colombian communities abroad, recognize them as a vital part of the nation and make them the subject of public policies. The purpose of the programme is:

(a) To promote the establishment of positive ties between Colombian communities abroad and the country, for mutual benefit;

(b) To manage mechanisms for improving their living conditions in their places of residence;

(c) To facilitate interaction of associations of Colombians abroad, both among themselves and with Colombia.

9. This programme has nine thematic areas, within the framework of which various activities are being developed to respond in a comprehensive manner to the needs of Colombians living abroad and to strengthen ties with them:

(a) Economic participation, the objective of which is to formulate policies that facilitate the transfer of resources to Colombia and to channel such resources towards savings and investment;

(b) Transnational networks, for the purpose of establishing channels of communication with Colombians living abroad concerning subjects of interest to them and the country;

(c) Population trends, with the goal of designing strategies and programmes that help to identify and characterize the Colombian population living abroad;

(d) Social welfare, which seeks to promote the development of public policies intended to reduce the vulnerability of Colombians abroad in the areas of labour migration, pensions and health;

(e) Education, the objective of which is to promote a space for study and research of Colombian migration;

(f) Political participation, the purpose of which is to strengthen the political participation of Colombians living abroad with regard to subjects of national interest;

(g) Culture, with a view to promoting shared spaces that make it possible to study the role of culture in the affirmation of national identity;

(h) Consular affairs, by enabling the Colombian consular service to meet the needs of Colombians living abroad;

(i) Portfolio of projects that may be financed or have the financial backing of Colombians living abroad, and creation of mechanisms for receiving donations.

10. Similarly, efforts are being made to take advantage of the potential of Colombian entrepreneurs, creators or investors whose work has been internationally recognized, so that they can use the experience they have gained in other countries to contribute to the economic, cultural and scientific development of Colombia. The Government is endeavouring to provide solutions and facilitate meetings and promote close ties between immigrants and their families. These actions take account of the social capital of the emigrants, since a large number of Colombians living abroad maintain their regional identity and close economic, social, political and cultural ties with the country.

11. With regard to the situation faced by Colombian migrant workers in the countries of destination in connection with respect for and guarantee of the rights established in the Convention, in the area of social and economic rights the high rates of irregularity have a negative impact on the possibility of lodging complaints against labour abuses, hinder claims in terms of ethnic origin and pose an obstacle to effective integration in the society of the receiving State.

12. The impact of the attacks of 11 September 2001 on political trends in migration, its emphasis on security and the tendency to associate irregular immigrants with terrorism have a real impact on Colombians' opportunities and modalities of migration. In this regard, the way migrants are perceived by the societies of receiving States has changed, showing a recent polarization that equates migration, particularly irregular migration, with an offence.

13. Similarly, changes in migration and security policies have had a negative impact on the civil rights of resident migrants.

14. The cross-cutting nature of the subject of migration has generated many actions at the inter-agency level to highlight the importance of the phenomenon of Colombian migration. In this regard, Colombia has promoted, in various international forums, the signing and ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. For its part, Colombia has applied the contents of the Convention to various regional forums, such as the South American Conference on Migration and the Central American Working Group.

15. Moreover, within the framework of the “Colombia Nos Une” programme, Colombia has supported civil society initiatives to prevent irregular migration and, with it, the violation of the rights of migrants.

16. This cooperation has been particularly instrumental in creating a positive and proactive discussion of the topic of migration. In this regard, Colombia has promoted, at the domestic, inter-agency and international levels, the appropriate use of the language relating to migrants, opting for a respectful attitude towards migration and rejecting the criminalization of migration, in accordance with article 5 of the Convention.

17. As part of the goal of strengthening transnational relations with Colombian communities and to make them the subject of public policies, the programme has actively promoted consular registration, active ties between Colombian consulates abroad with such communities, and support for cultural and social activities of Colombians residing abroad.

18. In keeping with part IV of the Convention, the “Colombia Nos Une” programme has stressed the importance of orderly and informed migration that respects the migration laws of receiving States. It has also contributed to the implementation, development and follow-up of temporary work migration programmes, established through international conventions. It has also carried out considerable follow-up on bilateral social welfare agreements with Spain, Chile and Uruguay.

19. In accordance with article 42 of the Convention, the “Colombia Nos Une” programme supported the initiative put forward by Congress to amend legislation relating to the election of the representative of the special district for Colombians living outside the country. This amendment will improve the representation of Colombians living abroad, through a spokesperson in Congress. Thus, only Colombians residing abroad constitute the district for electing their representative to the Chamber.

20. The above-mentioned actions constitute wide-ranging measures undertaken by the State of origin that have the purpose of promoting the objectives of the Convention beyond the borders of Colombia. And, while it is true that the Convention obliges signatory States to respect, guarantee and promote its application within their respective territories, nevertheless, bearing in mind the status of Colombia as a State of origin, the Government of Colombia has initiated a transnational discourse that offers migrants - regardless of their migratory status - the possibility of being recognized as subjects of rights.
